

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TENNESSEE
3 NORTHERN DIVISION, AT KNOXVILLE, TENNESSEE

3 George Chesney, Jot Raymond, :
4 Anita Auchard, Lee Scofield, :
5 James Campbell, et., al., : **VOLUME V**
6 Plaintiffs, :
7 Vs. : CV
8 : 3-09-09
9 Tennessee Valley Authority : 3-09-48
10 : 3-09-54
11 Defendant, : 3-09-64
12 : 3-09-517

13 Transcript of trial proceedings before the
14 Honorable Thomas A. Varlan on September 26, 2011.

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1 (The trial was resumed on
2 September 26, 2011.)

3 JAMEY DOTSON

4 was previously sworn and testified as follows:

5 **CONTINUED DIRECT EXAMINATION**

6 BY MR. BYRNE:

7 Q. Mr. Dotson, good morning.

8 A. Good morning.

9 Q. Since leaving the stand on Thursday afternoon
10 have you had an opportunity to review any case-related
11 documents or exhibits?

12 A. I did review some of the information that I
13 had reviewed prior to seeing you last Thursday. I
14 looked over the Excel spreadsheet that we discussed on
15 Thursday, as well as some of the photographs that I took
16 during the October 2008 inspection.

17 Q. Did you review anything else?

18 A. I looked at the e-mail that I sent to Melissa
19 Hedgecoth.

20 Q. What was the date of that e-mail?

21 A. I believe December 10th, '08.

22 Q. Do you remember the number of that e-mail?

23 A. I was relating to a report I received from
24 James Settles. I copied and pasted some information
25 from his report and sent it to Ms. Hedgecoth.

1 Q. Anything else you reviewed over the weekend
2 that may be pertinent to your testimony here today?

3 A. No, not in particular, no.

4 Q. Did you have an opportunity to review those
5 documents with TVA counsel?

6 A. I did look at one of those with counsel.

7 Q. Did you generally discuss your Thursday
8 testimony and your anticipated testimony here today with
9 TVA counsel?

10 A. No, we did not.

11 Q. Okay. When you and I last spoke on Thursday
12 we were discussing your interview with the OIG and
13 specifically your comments to the OIG about water level
14 monitoring data. Do you have that testimony in mind?

15 A. Yes, I do.

16 Q. How did the subject of water level monitoring
17 data come up during the OIG interview?

18 A. I don't recall exactly. The only thing I can
19 guess is I was asked by the OIG, asked the information
20 of how I received it and what was done with it?

21 Q. Okay. Do you recall telling the OIG that you
22 were receiving monthly stats of piezometer and well
23 point data and monitoring well data for the South and
24 North Dikes?

25 A. I recall telling him that I was receiving data

1 monthly for the various wells, yes.

2 Q. Did you specifically tell them that you were
3 also getting monthly data stats for the South and North
4 Dikes?

5 A. I don't recall if I called those out in
6 particular.

7 Q. Let's take a look at Exhibit 606, which I
8 believe was previously admitted into evidence. This
9 appears to be the second set of data we have been
10 discussing, specifically the piezometer and well point
11 data. Do you recognize it as such?

12 A. Yes, I do.

13 Q. In Exhibit 606 there is a series of tables at
14 the top with numbers that have been inputted and just
15 below there are a series of bar graphs. Do you see
16 those?

17 A. Yes, I do.

18 Q. Who inputs the numbers into the table each
19 month or who did as of late 2008?

20 A. Late 2008 Chris Buttram was responsible for
21 inputting the data.

22 Q. I believe you testified on Thursday for a
23 short period of time you had that responsibility, but
24 did not have an opportunity to actually enter monthly
25 data into the spreadsheet. Is that correct?

1 A. Yes, it is.

2 Q. If we can, let's just back up just briefly to
3 Exhibit 919. Again, I think that is the other set of
4 data we spoke about at length on Thursday, correct?

5 A. Yes, it is.

6 Q. All right. I'm sorry to jump back and forth
7 for you so much here. I hope you didn't put 606 away.

8 A. No.

9 Q. I was trying to lay a foundation to kind of
10 dive back in with you here today.

11 Let's do go back to 606 just for one moment,
12 if we can pull that up on the screen. I called it a bar
13 graph. I don't know that is actually the correct term.
14 What is that bar chart or graph at the bottom? What
15 does that depict?

16 A. It's not a bar graph. It's some sort of
17 scatter plot, or I am not sure of the exact term you
18 would like to use, in Excel. It's similar to a scatter
19 plot.

20 Q. Did you say scatter plot, p-l-o-t?

21 A. Yes, sir.

22 Q. That is as good a term as any for me. We'll
23 stick to scatter plot. The scatter plot, if I
24 understood Mr. Williams' testimony last week, Matt
25 Williams' testimony, that is a computer-generated plot

1 that comes together once all of the data points in the
2 tables above it are inputted each month. Is that right?

3 A. That is true.

4 Q. And then in the X axis of that scatter plot
5 you have got several numbers actually beginning to the
6 far left with negative 2,000 and then to the far right
7 we have the number 600. Do you see that?

8 A. Yes, I do.

9 Q. As I understand it, those numbers, those
10 ascending and descending numbers denote the location of
11 a particular monitoring well in relation to the site of
12 the 2003 and 2006 blowout area, is that correct?

13 A. No, it's not. They don't indicate the
14 location of monitoring wells. They indicate the
15 location of piezometers and dewatering well points.

16 Q. We kind of went through this a little bit on
17 Thursday. Just to refresh the Court's recollection, a
18 monitoring well can be a piezometer, correct?

19 A. Yes, it can be.

20 Q. Okay, but a piezometer can't necessarily have
21 the multi-function capacity of a monitoring well, is
22 that true?

23 A. I don't know that I agree with that. A
24 piezometer is used to measure the static water level in
25 a given area. We had three what I would call sets of

1 two sets of piezometers and one monitoring or two
2 watering well points. The monitoring wells as in 13,
3 14, 15 on the north or 10 through 12 on the south were
4 piezometers, but they weren't referred to as piezometers
5 in our reports. They were referred to as monitoring
6 well X. When you say the term "monitoring well" those
7 come into mind, not the piezometers located on the west.

8 Q. Just to close out that. Why don't we turn to
9 exhibit -- let me get you Exhibit 596 which was
10 previously entered during Mr. Williams' testimony.

11 A. I have it.

12 Q. Okay. If you would, turn to bates stamped
13 page 11426; sorry, 11429. It's toward the second half
14 of the document. At the top of the 11429 Plaintiff's
15 Trial Exhibit 596, you will see it reads "Type 1
16 Piezometer Installation Record." Do you see that?

17 A. Yes.

18 Q. Under TVA well number it says MW-13. You see
19 that?

20 A. Yes, sir.

21 Q. And that is one of the wells on the North Dike
22 that you were talking about earlier, correct?

23 A. Yes, it is.

24 Q. Okay. Although it is labeled a piezometer, it
25 is actually a monitoring well because it can perform

1 other functions besides simply collecting water level
2 data, is that right?

3 A. I understand that that was not the intent of
4 those monitoring wells. It could be used for other
5 functions, yes.

6 Q. You know sitting here today that is precisely
7 what it was used for or at least one of the things it
8 was used for was to measure water levels within the
9 North Dike?

10 A. That was the sole intent.

11 Q. Sir?

12 A. That was the sole intent, as I understand it.

13 Q. Okay. So, good. We are on the same page.

14 Now, Mr. Williams suggested last week that
15 another purpose for the North and South Dike monitoring
16 wells during their installation back in January of 2005
17 was to provide a means of testing hydraulic property of
18 the dredge cells or the dikes during the lateral
19 expansion project. Is that true?

20 A. My understanding of Monitoring Wells 13, 14
21 and 15 was that they were installed as a way of
22 verifying the water levels that were used in the seepage
23 analysis of the dredge cells.

24 Q. Okay. Generally speaking, one of the purposes
25 of the North and South monitoring wells was to aid in

1 the construction and the monitoring of construction for
2 the lateral expansion dredge cell project, if you know?

3 A. I am sorry. I didn't understand your
4 question.

5 Q. Would you agree with me, sir, at least one of
6 the purposes of Monitoring Wells 10 through 15, the
7 North and South Dike monitoring wells, at least at the
8 time they were installed, was to assist in the
9 collection of data pertinent to the lateral expansion
10 dredge cell project?

11 A. I don't believe they were related to the
12 lateral dredge cell. The lateral dredge cell was on the
13 east side of the complex, not on the north or south. My
14 understanding is that they were installed solely to be
15 able to verify the water levels that were used in the
16 seepage analysis.

17 Q. Let me read you a passage of testimony. This
18 is from Matt Williams, page 150 of his trial transcript
19 starting with line 17. I am just reading this to you to
20 try to get an idea or framework for a discussion about
21 the monitoring wells. The question was asked, "Well,
22 and these were installed as a result of the 2003
23 blowout, do you recall that? Answer, I do recall and
24 the wells that were actually installed in January of
25 2005 were actually installed for multi-purpose,

1 including we had a permit that we were submitting for
2 expansion of the dredge cell. This would be a lateral
3 expansion area. We wanted some multi-purpose wells out
4 there that we could use to test some of the hydraulic
5 properties of the dredge cell."

6 Was Mr. Williams right about that? Does that
7 refresh your recollection?

8 A. As I said several times now, my understanding
9 is that they were there for verification of the water
10 levels that were used in seepage analysis. I am not
11 saying that is their only intent. That was the extent
12 of my knowledge.

13 Q. The seepage analysis that you are referring
14 to, did that not have any connection to the lateral
15 expansion dredge cell project?

16 A. Potentially.

17 Q. Well, that project is concluded, hasn't it?

18 A. The lateral expansion was not finished. It
19 concluded on December 22nd, 2008.

20 Q. Okay. But it was well underway as of December
21 of 2008, right?

22 A. I wouldn't say it was well underway.
23 Construction had started, but no significant progress
24 had been made. We were barely out of the ash pond with
25 the dikes. We weren't even up to the drainage layer

1 portion of the bottom of the expansion.

2 Q. Okay. Well, at any time during those initial
3 stages of the lateral expansion project did you make use
4 of any hydraulic data coming from Monitoring Wells 10
5 through 15?

6 A. My involvement with the expansion was to
7 provide construction support, so I am not sure if anyone
8 had used these prior to my involvement. I did not use
9 them as part of the initial construction.

10 Q. Okay. Pull, if you would, Plaintiff's Trial
11 Exhibit 5461, which is a document that was also
12 previously admitted last week. Do you have that in
13 front of you, sir?

14 A. Yes, sir.

15 Q. Do you know what that is?

16 A. I can barely read it. It appears to be a
17 drawing that covers the northwest section of the dredge
18 cell.

19 Q. Okay. And I will -- if you can pull up the
20 highlighted portion, those three dots, maybe that will
21 give us a little more -- or pull up an even larger area
22 in case there is any writing around it.

23 Does that make it a little easier to read?

24 A. Thank you, yes.

25 Q. Can you tell from this expanded version of

1 Plaintiff's Exhibit 5461 what those three highlighted
2 dots are?

3 A. Those are Monitoring Wells 13, 14, 15.

4 Q. Let's go back to the full image then. If you
5 would, and you can do this simply by touching the screen
6 in front of you. Can you point to the area generally
7 where you understand the December 22, 2008, dike failure
8 to have occurred? Where is that in relation to these
9 monitoring wells?

10 A. (Indicating on screen).

11 Q. And based upon your knowledge of the dike
12 system, how far away is that failure point from those
13 three monitoring wells on the North Dike?

14 A. I can't make out the scale on this drawing.

15 Q. Is it less than 200 feet, more than 200 feet,
16 do you know?

17 A. More.

18 Q. More? How much more, roughly? I not looking
19 for an exact, just a ball park.

20 A. From the northwestern most point where I have
21 drawn the blue line on the monitoring wells?

22 Q. Uh-huh.

23 A. I would estimate to be on the order of 1,500
24 to 2,000 feet.

25 Q. And are you talking about where the arrow is,

1 see where the arrow is pointing you are saying that is
2 1,500 feet?

3 A. No, from the northwestern most point where I
4 initiated the blue line.

5 Q. I see. How far are the monitoring wells from
6 the point where you initiated the blue line?

7 A. 1,000 to 1,200 feet.

8 Q. All right. And that total dike surface, that
9 North Dike surface spans approximately how many feet
10 total, or yards, if you need to use yards.

11 A. Without seeing the drawing, I would dare say
12 2,500 to 4,000 feet.

13 Q. Wait a minute. So is it your testimony that
14 that's -- why don't we do this. Why don't we pull up
15 another map. I want to make sure we have the scale
16 right here. Let's put up Plaintiff's Exhibit 59. You
17 have seen this particular exhibit before haven't you?

18 A. Yes.

19 Q. Okay. And you see the red outline and the
20 area that says probable December, 2008 failure location?

21 A. Yes, I do.

22 Q. Now, based on my study of the previous
23 exhibit, and other exhibits that have been introduced,
24 would you agree that the monitoring wells are actually
25 at the eastern most extent of the red line depicting the

1 failure location?

2 A. I would agree that they are in that general
3 area, if not further to the east.

4 Q. You think they are further to the east than
5 the eastern most extent of the red line probable failure
6 location marking?

7 A. I would agree they are at or near the eastern
8 most portion of that line or further to the east.

9 Q. Okay. Now, during the course of your
10 interview with the OIG agents on January 7, 2009, you
11 discussed water level monitoring data with them,
12 correct?

13 A. Yes.

14 Q. And then at some point did you offer to
15 provide them with the monitoring well data that you had
16 or the water level monitoring data that you had?

17 A. I don't recall. It might be helpful if I
18 actually had the exhibit that contains the interview.

19 Q. Certainly. That is Exhibit 4518.

20 Let's turn to page 3 of that exhibit, bates
21 116563. We'll focus our attention. We'll focus our
22 attention on the fourth paragraph of that page. Okay,
23 beginning with I believe the fourth sentence there is a
24 reference to water level readings for approximately the
25 last year. Do you see that?

1 A. Yes, I do.

2 Q. Again, is that information that you provided
3 based on a question that was put to you by the OIG
4 agents or did you raise the issue yourself?

5 A. I don't recall. That interview took place a
6 few years ago. At that point in time I was interviewed
7 by lots of people various times. I don't recall if I
8 offered the information or if I was asked.

9 Q. How many times were you interviewed by the
10 OIG?

11 A. Once for this incident.

12 Q. And all the other interviews were with TVA
13 officials or TVA contractors?

14 A. Yes, TVA or TVA contractors.

15 Q. At some point either before, during or after
16 this January 7, 2009, interview with the OIG agents did
17 you assist in the production of water level monitoring
18 data to the OIG?

19 A. I don't recall if I did. It is not a stretch
20 to say that I did.

21 Q. Would you say it's a probability that you did,
22 or it's probable that you --

23 A. I think it's reasonable.

24 Q. Okay. You say it's likely that you did?

25 A. I don't recall.

1 Q. Okay. Probable is good enough then.

2 Well, in front of you you should find what has
3 been marked as Plaintiff's Trial Exhibit 1584.

4 A. Okay.

5 Q. While you are at it, can you pull 1585 as
6 well, both 1585 and 1584 were admitted last week. We'll
7 be talking about both of them. So that we can be really
8 efficient this morning, can you pull Exhibit 287 as well
9 once you get 1584 and 1555 in front of you.

10 A. Okay.

11 Q. You have all three exhibits in front of you?

12 A. Yes.

13 Q. Okay. Now, let's start with Exhibit 287
14 because I think I don't believe we have introduced this
15 before. Exhibit 287 appears to be a document created at
16 some point by Geosyntec. It's entitled Groundwater
17 Level Data Entry and Viewing Directions. Have you seen
18 that?

19 (Exhibit No. P-287 was marked for
20 identification.)

21 A. Yes.

22 Q. Have you seen a copy of this document or at
23 least this first page instruction sheet prior to today?

24 A. Yes, I, have.

25 Q. Do you recognize it as a record that TVA

1 received and kept in the ordinary course of its
2 business?

3 A. Yes.

4 MR. BYRNE: Your Honor, we offer
5 Plaintiff's Trial Exhibit 287 at this time.

6 MR. MARQUAND: No objection. I think it's
7 already entered in Mr. Hensley's testimony.

8 THE COURT: As a precaution, we'll admit
9 287. Perhaps we have already admitted it.

10 MR. BYRNE: It may have been double marked
11 or I may have made a mistake. I apologize for that.

12 THE COURT: That is fine.

13 (Exhibit No. P-287 was received in
14 evidence.)

15 BY MR. BYRNE:

16 Q. Let's go to the last paragraph on the first
17 page under the heading Data Protection. You see that?

18 A. Yes.

19 Q. And as I understand it, this data protection
20 paragraph then is addressing or applying to the
21 piezometer and well point data tables and charts that
22 follow on the pages after that?

23 A. That is my understanding, yes.

24 Q. Now, the data protection paragraph reads, "The
25 table/graph format and calculation pages are protected

1 to maintain the file's integrity and reporting
2 capabilities."

3 That's a pretty common procedure, is it not,
4 for the handling of the most sensitive scientific data
5 charts, graphs, tables, that sort of thing?

6 A. It's not something that I typically use if I
7 am the only person managing a spreadsheet. If you have
8 a potential for multiple people to be opening and
9 editing, I think it is something that would be used.

10 Q. It's a good idea to keep people from getting
11 into data and manipulating it, changing it, deleting it
12 worse still, would you agree?

13 A. No, I don't. I think it is a precaution to
14 prevent the inadvertent changing of something.

15 Q. Okay. What about the inadvertent deletion of
16 important data?

17 A. I think it would depend on the intent.

18 Q. Okay. The intent is what matters, correct?

19 A. Yes.

20 Q. All right. It says in the next sentence,
21 "Should a change be absolutely necessary, please see the
22 project manager for the password." Who was the project
23 manager for the well point piezometer data and who had
24 the password?

25 A. I am not sure who the project manager was, but

1 it would have been someone with Geosyntec Consultants,
2 most likely.

3 Q. You think it would have been Neil Davies?

4 A. That would have been the first person I would
5 have gone to, should I needed to access or change the
6 data.

7 Q. Okay. That would have been the first person
8 that Mr. Buttram would have had to go to if he wanted to
9 access or change data, correct, at least as of December
10 of 2008 and January of 2009, correct?

11 A. I am not sure of the contacts that Chris had
12 with Geosyntec. At this point in time Neil Davies was
13 my primary contact so that is who I would have used.

14 Q. Okay. Let's turn to what has been previously
15 admitted as Plaintiff's Exhibit 1555. This appears to
16 be an e-mail chain between yourself, Chris Buttram and
17 Ronald Hall and Barry Snider. Do you see that?

18 A. Yes.

19 Q. The subject line is KIF Groundwater Monitoring
20 Outlook. That begins with a Saturday January 3, 2009,
21 e-mail from Mr. Buttram to you. You see that at the
22 bottom?

23 A. Yes.

24 Q. Okay. Mr. Buttram sent this to you and copied
25 it to Barry Snider. Again for the Court's benefit, can

1 you tell us who Barry Snider is?

2 A. At this point in time Barry Snider was the
3 civil engineering principal in Fossil Engineering.

4 Q. And then as of January 3, 2009, who was Ronald
5 C. Hall?

6 A. Ron Hall was the Plant Manager at Kingston.

7 Q. Do you happen to know when he became plant
8 manager, just a general time frame?

9 A. No, I don't.

10 Q. Is he still in that position today?

11 A. No, he's no longer the plant manager.

12 Q. Is he retired?

13 A. I'm not certain.

14 Q. All right. Let's look at what Mr. Buttram
15 told you on Saturday here at the bottom. We'll pull
16 that paragraph up under, "Please find attached."
17 Mr. Buttram says, "Please find attached the Excel
18 spreadsheet containing piezometers that were used to
19 monitor the groundwater level. This is just a copy and
20 has been modified so that the well points do not show on
21 the graph. The original is still in its usual location.
22 If you have any questions, please let me know."

23 All right. Let's look at your response.

24 MR. MARQUAND: Objection. Is there a
25 question, or is counsel just reading the document into

1 the record?

2 THE COURT: I thought he was directing him
3 to part of the document.

4 MR. BYRNE: I can rephrase.

5 THE COURT: Go ahead.

6 BY MR. BYRNE:

7 Q. The first paragraph we read from Mr. Buttram,
8 you recall getting that e-mail from him don't you?

9 A. Yes.

10 Q. And did you respond to it?

11 A. Obviously we have a copy here in front of us
12 where I responded.

13 Q. I am asking for Mr. Marquand's benefit. If
14 you will look at the top, let's look at your response.
15 Read that three sentence response into the record,
16 please.

17 A. "Chris, you still have one well point showing
18 in the red in August of 2008. Doesn't this need to be
19 removed? I believe this should only show the well
20 points." For clarity, I have misspoken there with the
21 last two words "well points." The intent was for that
22 to read piezometers.

23 Q. Right. You wanted well points removed from
24 the spreadsheet, is that accurate?

25 A. It wasn't that I wanted them removed from the

1 spreadsheet. The intent of removing them was to improve
2 the clarity of the data. If one were to look at the
3 output or the graph only and not pay attention to some
4 of the fine text that is located beneath the output, it
5 would be very easy for someone to misunderstand the data
6 that was shown.

7 Q. Who did you think would misunderstand the
8 piezometer and well point data or the text that you just
9 referred to?

10 A. It wasn't I felt anyone in particular would
11 misunderstand it. We understood there was the potential
12 for someone to if one were to look at it solely at the
13 colored chart and not read the information contained on
14 the page -- that is a very busy page, as you know -- we
15 felt it was important to remove any extraneous data so
16 when somebody takes a two second look at it they see the
17 data that is important.

18 Q. Again, you are talking about somebody seeing
19 it outside of the TVA organization?

20 A. No, not necessarily. I think there was a
21 potential there for upper management to look at it and
22 see we were showing that the dewatering well points were
23 actually plotting in the red, when that wasn't actually
24 an indication of any problems.

25 Q. Well, the well points were measuring water

1 levels at least within a certain horizontal plane were
2 they not?

3 A. They weren't measuring static water surface.
4 Those were actually, as I understand it, showing a
5 dynamic flow of water due to some local phenomenon that
6 was in the area and that they weren't indicative of the
7 static phreatic water surface. They were more
8 representative of flowing data. It was possible to have
9 a piezometer that was nested in the same general area as
10 one of the dewatering well points, but at a shallower
11 elevation as the piezometers were and have that
12 piezometer show a different water level. The dewatering
13 well points were actually nested on the order of 20 feet
14 below the ground surface, whereas the piezometers were
15 three to five feet below the ground surface.

16 Q. Going back to Exhibit 287, this is the
17 groundwater data level entry and viewing directions
18 exhibit that we saw earlier. Just jumping to that for a
19 second. In any portion of this exhibit did Geosyntec
20 instruct you or anyone else at TVA to ignore the well
21 point data?

22 A. Without reading the entire exhibit, I can't
23 say for certain whether it is contained in here, but we
24 had been told verbally I know that the dewatering well
25 points weren't indicative of the phreatic surface.

1 Q. They gave an indication of the phreatic
2 surface and the extent to which water had or had not
3 intruded into the dike didn't they?

4 A. I just said they were not indicative of the
5 water surface. They were actually measuring of the
6 dynamic flow of water taking place at depth, not the
7 local phreatic surface near the level of the
8 piezometers.

9 Q. Why do you think -- Geosyntec kept this
10 spreadsheet for quite some time didn't it?

11 A. I am not sure how long they maintained the
12 spreadsheet. I do understand they did for a while.

13 Q. At some point TVA took it over in 2008?

14 A. I am not sure of the time frame when we took
15 over the ownership of the spreadsheet. At some point it
16 became less costly for us to maintain it ourselves
17 instead of paying somebody from Atlanta to drive to the
18 site or Knoxville to drive to the site, read the data,
19 handle the spreadsheet in addition to the managerial and
20 administrative cost that would be associated with an
21 outside party handling this for us.

22 Q. The answer to my original question was, yes,
23 Geosyntec handled this spreadsheet for a period of time?

24 A. That was my understanding, yes.

25 Q. And then there was a time period where you

1 took ownership for a brief time and Mr. Buttram after
2 you. TVA, meaning you and/or Mr. Dotson, were inputting
3 the data into these Geosyntec spreadsheets?

4 A. I am Mr. Dotson. I believe you meant Buttram.

5 Q. Mr. Buttram.

6 A. Yes.

7 Q. Is it your understanding -- well, at any point
8 in time when Geosyntec was handling this spreadsheet did
9 they ever delete any well point data from this chart?

10 A. I wasn't involved with the project, when
11 Geosyntec was managing it. I wouldn't have seen a need
12 for them to have done so because they understood what
13 the spreadsheet was meant to portray since they were the
14 initiators. They understood the dewatering well points
15 weren't indicative of the static phreatic surface along
16 the western dike of the dredge cell.

17 Q. If they understood that, why did they plot the
18 way they did and why did you feel the need after the
19 December 22, 2008 ash release to change it?

20 A. The answer to the first question is I am not
21 sure why they did that. I wasn't involved, nor was I
22 privy to any conversation that took place while they
23 were developing it. As I previously testified, we felt
24 the need to remove that data because it was extraneous
25 and wasn't indicative of the surface conditions in the

1 area. It was a measure of flowing water. If someone
2 were to get ahold of the spreadsheet and take a look at
3 the graph and not read anything, they would take away a
4 message that was not true, that there were elevated
5 water levels in the area. Had someone taken the time to
6 read the footnote, they would have understood the
7 dewatering well points were not indicative of the static
8 phreatic surface. To be honest, I don't know why
9 Geosyntec plotted them in the area they did.

10 Q. They did didn't they?

11 A. Yes, they did.

12 Q. Let's turn to Exhibit 1584. This is an e-mail
13 string that begins at 5:33 p.m. on January 7, 2009, and
14 concludes on Thursday, January 8, 2009. Do you see
15 that?

16 A. Yes, I do.

17 Q. All right. If I recall correctly, you were
18 interviewed by the OIG on January 7, 2009, is that
19 right?

20 A. Without looking back, I am not certain. I
21 know it was early January.

22 Q. Look at 4518. It has the date on the first
23 page.

24 A. Yes, I was interviewed by the OIG on January
25 7th, 2009.

1 Q. Okay. So you are interviewed on Wednesday,
2 January 7th, 2009, and then on January 8th, 2009,
3 Mr. Buttram appears to be requesting the monitoring
4 well, excuse me, the piezometer and well point
5 spreadsheet password from Geosyntec. Does that appear
6 to be what this e-mail chain indicates?

7 A. Yes, it does.

8 Q. Why would Mr. Buttram be looking for the
9 password for the piezometer and well point spreadsheet
10 the day after your OIG interview?

11 A. I don't think that there is any common
12 denominator between the two. As I recall the events,
13 there was the fear that if someone in upper management
14 got ahold of the spreadsheet and didn't take the time to
15 read the fine print they might misunderstand the plot.
16 That they might have thought that there was a problem
17 when indeed there wasn't. Had they taken time to have
18 read the footnote, they would have understood that.

19 Q. See, that is what troubles me, Mr. Dotson,
20 because on the day of the incident, December 22, 2008,
21 you actually sent a small one paragraph memorandum with
22 the well point and piezometer data to some of the top
23 officials at TVA, to include Mr. Kilgore, didn't you?

24 A. Yes. We have established that.

25 Q. Okay. So why would you need to be removing

1 anything from these spreadsheets? You had already
2 explained to upper management what the significance or
3 insignificance of the well point data was, right?

4 A. Yes. Let me retract that. I gave you an
5 answer I don't accept. I don't know that I had
6 explained that. I realized that I provided files and
7 did cc TVA's executive management. Did I direct them to
8 read the footnote and fine print? I don't recall doing
9 that. Did I tell them that when you look at this data
10 you need to be careful and read the entire sheet? No, I
11 did not.

12 Q. You didn't send Mr. Kilgore and a lot of other
13 top executives at TVA a memorandum, a one paragraph
14 memorandum with the well point piezometer data on
15 December 22, 2008, that explained exactly what you have
16 testified to here today?

17 A. No, I did not.

18 Q. You didn't?

19 A. That explained everything that I have
20 testified to here today, no.

21 Q. You didn't send them a memorandum on December
22 22, 2008, that told them that the well point data, just
23 to sum it up, wasn't all that important?

24 A. I don't recall what the body of the e-mail or
25 the memorandum stated. If you would like, I will gladly

1 look at it. I don't recall exactly what I wrote.

2 Q. We'll look at that in just a moment. How
3 would it help them understand better what is going on in
4 these spreadsheets by removing it? How does removing
5 data help people understand data?

6 A. As I previously testified a few times now, if
7 someone were to look at that data without taking the
8 time to read the fine print, they would misunderstand
9 what was being shown. By removing the data and not
10 destroying the data -- the native file was left in tact,
11 as a previous exhibit that you provided states. Chris
12 says the original file is still in its location. He
13 even gives the server location of where it was
14 maintained. This is simply a cleanup of that data.

15 Earlier when I said it might have been for
16 upper management, it might have been for public
17 consumption. I don't recall.

18 Q. I asked you if it was for public consumption.
19 You told me it wasn't. Are you saying now that one
20 concern might have been this could get out into the
21 public domain?

22 A. What I stated was I don't recall. As you
23 said, I previously testified I was asked for the
24 password or what we could do to unlock that and it
25 appeared that I had either provided Chris the password

1 or a contact. I don't recall what the previous exhibit
2 stated.

3 Q. You didn't have the password as of January 3,
4 2009, did you?

5 A. I don't recall when I received the password.
6 The previous e-mail does have the date on it.

7 Q. Do you think perhaps the reason Mr. Buttram is
8 asking Neil Davies of Geosyntec to provide him the
9 password on January 8th, 2009, is because he didn't have
10 it and you didn't either. Only Geosyntec had it?

11 A. That is likely, yes.

12 Q. In fact, you directed Mr. Buttram, did you
13 not, to contact Geosyntec the day after your OIG
14 interview to get the password so that you could formally
15 remove that well point chart from the spreadsheet?

16 A. I don't recall directing Chris to do that. I
17 believe I previously testified I don't recall there was
18 anything that tied the OIG interview to the request for
19 someone to pull out the extraneous data.

20 Q. Well, you told Mr. Buttram on the third,
21 January the 3rd, to remove the extraneous data as you
22 called it, didn't you?

23 A. If you would like me to look at an exhibit, I
24 can answer your question.

25 Q. I have shown you the exhibit. It's Exhibit

1 1555. Here you are telling Mr. Buttram, "You still have
2 one well point showing in the red in August of 2008.
3 Doesn't this need to be removed? I believe this should
4 only show the well points." You clarified what you
5 meant to say, this should only show the piezometer
6 readings?

7 A. I am glad you brought this back up. This
8 actually shows --

9 Q. Sir, I am asking, I have a question pending.
10 I would like you to answer it. Did you direct
11 Mr. Buttram on January 3, 2009, to remove the well
12 points data from the spreadsheet, to include this August
13 2008 reading?

14 A. I did not make the initial request for Chris
15 to remove the data.

16 Q. Who did?

17 A. I am uncertain.

18 Q. Did one of your superiors direct you to give
19 that instruction to Mr. Buttram?

20 A. I am not sure who asked Chris to do that. I
21 was not in Chris' chain of command, nor was he in mine.

22 Q. Is it your idea to have him do this or did
23 someone come up with this idea and present it to you?

24 A. I don't recall whose idea this was.

25 Q. You are not sure if it was yours?

1 A. I would have had no reason to have pulled that
2 out.

3 Q. What I am getting at, Mr. Dotson, is I am
4 trying to figure out is this something you came up with
5 or did you have help? How did the idea of removing the
6 well point data from the spreadsheet come up?

7 A. I don't know. If asked to speculate, my
8 imagination would tell me that we had conferred with
9 Geosyntec, as we had multiple consultants at this point
10 in time, and they had told us once again that the
11 dewatering well point data was not indicative of the
12 static phreatic surface and if someone doesn't take the
13 time to read the footnote, it's possible for someone to
14 misrepresent the data.

15 Q. Footnotes aside, Mr. Buttram on the 8th,
16 January 8th, he isn't asking anybody at Geosyntec to
17 perform the deleting function. He is just trying to get
18 the password so he can do it himself. Isn't that a fair
19 characterization of what is going on?

20 A. At that point in time TVA managed the
21 spreadsheet and would have not needed Geosyntec to
22 manipulate it or delete it.

23 Q. To do it at TVA you had to get the password
24 didn't you? Mr. Buttram did.

25 A. That's correct.

1 Q. These were data-protected files, correct?

2 A. These were data-protected files that TVA
3 owned.

4 Q. You didn't own the password, did you?

5 A. At that point in time we did not, no. With
6 any design or analysis that takes place for TVA, once
7 the analysis or design is complete, TVA takes ownership
8 of all native files. That is standard practice.

9 Q. Okay. Well, just to kind of bring this full
10 circle, Mr. Buttram got the password, did he not?

11 A. Yes, he did.

12 Q. And he removed the well point information from
13 the plot graph, correct?

14 A. Yes, he did.

15 Q. Did he make any other changes or modifications
16 to the spreadsheet after he got the password other than
17 ones we have just enumerated?

18 A. With the exception of preserving of the
19 initial file and saying this as a different file name,
20 not that I am aware of.

21 Q. To your knowledge, was this changed file that
22 Mr. Buttram created on the 8th, did you get a copy of
23 it?

24 A. I am sure I did.

25 Q. What did you do with it?

1 A. It would have been stored somewhere in
2 Microsoft Outlook or on the hard drive of my computer.

3 Q. The reason I ask is we have never had a copy
4 of it produced to us in this case. I am wondering, is
5 that something you could get without much difficulty
6 sometime this week?

7 A. It is something I could attempt to search for.
8 I provided all external and external hard drives that
9 were associated with my laptop as part of the discovery.

10 Q. The version that Mr. Buttram created on
11 January 8th, or shortly thereafter, was that then in
12 turn produced to the OIG at some point by TVA?

13 A. I am uncertain.

14 Q. Are you sure? You don't have any recollection
15 of the changed version of this spreadsheet being
16 produced to the OIG?

17 A. That's correct. I don't recall.

18 Q. Who besides you got a copy of the deleted
19 spreadsheet, the spreadsheet with the deleted well point
20 information?

21 A. Do you recall the exhibit number that contains
22 the e-mail where Chris had sent that?

23 Q. Sent what?

24 A. Where Chris sent the modified spreadsheet.
25 You have given me about --

1 Q. He e-mailed it to you, didn't he?

2 A. I am asking could I see the exhibit.

3 Q. I could if TVA counsel produced it to us.

4 They have not. Do you have a specific recollection of
5 Mr. Buttram sending that back to you via e-mail?

6 A. I would have received it because on January
7 3rd, four days prior to my OIG interview I sent Chris an
8 e-mail back, which you provided as an exhibit this
9 morning, where I informed Chris he actually left one of
10 the dewatering well points still in place.

11 Q. Sometime after January 8th, 2008, he got the
12 password, made that change and then forwarded another
13 draft of the revised spreadsheet to you via e-mail,
14 correct?

15 A. That is reasonable to assume, yes.

16 Q. And what did you do with it? Did you forward
17 it to anybody?

18 A. I don't recall.

19 Q. Do you remember back on December 22, 2008,
20 when you were e-mailing a lot of different people in
21 upper management this monitoring well data and
22 piezometer and well point data? Do you remember that?
23 Do you have that time frame in mind?

24 A. I remember sending lots of e-mails during the
25 19 hours I worked on December 22, 2008, yes.

1 Q. Do you have a similar recollection of sending
2 this revised spreadsheet to those same people in upper
3 management?

4 A. I didn't recall sending it to upper
5 management, as I previously testified on Thursday, and I
6 am testifying now I don't recall whether I sent that out
7 or not.

8 Q. We didn't talk about the edited spreadsheet on
9 Thursday.

10 A. On Thursday.

11 Q. I am talking about the one that Mr. Buttram
12 went in and got the password, changed and then sent to
13 you. Did you send that to upper management?

14 A. As I don't recall sending the initial
15 spreadsheet to upper management, I don't recall whether
16 or not I sent the revised spreadsheet to upper
17 management.

18 Q. Are you now saying that you don't recall
19 sending those, all that monitoring well data out on the
20 22nd during the I think you said 19 hours you were
21 working that day?

22 A. For clarity, I said I did not recall. I
23 recall that now, as you provided that as an exhibit to
24 me.

25 Q. Okay. I see.

1 Pull if you would, Exhibit 2701.

2 (Exhibit No. P-2701 was marked for
3 identification.)

4 Q. This appears to be a pair of e-mails the first
5 one at the bottom dated Thursday, January 15, 2009, from
6 Mr. Jack Brennan to Joseph Bohr. The subject line reads
7 "KIF Piezometers and Well Points Master." You see that?

8 A. Yes, I do.

9 Q. Okay. Do you recall sending the piezometer
10 and well point spreadsheet that we have been talking
11 about and that Mr. Buttram got the password for on
12 January 8, do you recall sending that to TDEC at some
13 point?

14 A. I don't recall sending the revised Excel
15 spreadsheet that Chris provided to anyone.

16 Q. Okay. Do you know who Jack Brennan is?

17 A. No, I don't know who Jack Brennan is.

18 Q. Do you know who Joseph Bohr is, B-o-h-r?

19 A. Joseph Bohr works for the OIG. He is one of
20 the agents that interviewed me on January 7th, 2009.

21 Q. I see. Okay. Mr. Brennan writes, "Looking at
22 e-mail and found this. If you look at the sheet titled
23 TOS piezometers you see a series of measurements. What
24 struck me was the number of wells or whatever that were
25 not available for measurement summer to November." The

1 next paragraph it reads, "In any event, this lack of
2 measurement from parts of the dike could be the
3 negligent event." You see that?

4 A. Yes, I do.

5 Q. Would you agree with me, sir, that as early as
6 -- well, less than 30 days after the December 22, 2008,
7 ash release incident the OIG was looking carefully at
8 the monitoring, the water level monitoring issue and its
9 role in the disaster?

10 A. I couldn't speak on the OIG's intent. It does
11 appear they were interested in the water level
12 monitoring that had taken place.

13 Q. It also looks like they got a copy of the
14 piezometer and well point spreadsheet, right?

15 A. Yes, it does.

16 Q. Do you know how they got it?

17 A. I can't tell from this e-mail if Jack Brennan
18 had sent it. I am uncertain.

19 Q. You think that Jack Brennan sent the
20 piezometer and well point spreadsheets to Mr. -- how
21 would Mr. Brennan get that without it coming from TVA?

22 A. I am not sure who Mr. Brennan is. What I said
23 is I can't tell from reading this e-mail if he sent it
24 to the OIG. I might very well have sent it to them
25 around with the thousands of other e-mails that were

1 sent. I don't recall if I did or not.

2 Q. You don't have any idea how the agent who
3 interviewed you got his hands on this piezometer and
4 well point data?

5 A. I believe I told you several times now that I
6 don't recall if I sent it or not. If asked to provide
7 the data, I would have gladly done so.

8 Q. Mr. Brennan goes on to say in the second to
9 the last sentence, "I haven't yet found a drawing that
10 shows where the measurement points are located in the
11 dike. Have you seen one?" You see that sentence?

12 A. Yes, I do.

13 Q. Do you know if your office sent a drawing
14 depicting the location of the piezometers, well points
15 and monitoring wells to the OIG agents?

16 A. I don't recall if we sent the drawing. The
17 spreadsheet that they obviously received has a depiction
18 of the location of those wells that is contained in the
19 graph. You previously noted the ascending and
20 descending numbers along the bottom, the scatter plot.
21 That was indicative of the location of each of the
22 piezometers and dewatering well points in relation to
23 the remediation area.

24 Q. This is shortly after the December 22, 2008,
25 disaster. Wouldn't the OIG agents have to have a map or

1 a little more information about that zero point to be
2 able to interpret those locations?

3 A. I can't speak to what they had or didn't have,
4 needed or didn't need.

5 Q. I got to tell you. I mean, even two and a
6 half three years into this case it took me quite a while
7 to figure out exactly what that plot meant. Are you
8 saying these agents should have picked up on that right
9 from the jump?

10 A. I am saying had I been asked I could have
11 provided them the information and can't say today
12 whether I did or didn't provide additional information
13 for them.

14 Q. You don't know if you were the one who sent
15 this to the agents seven days after Mr. Buttram made his
16 changes to the spreadsheet or not?

17 A. I have testified to that several times now.

18 Q. Okay. This reference here -- if we can go up
19 one paragraph. Mr. Brennan says, "What struck me was
20 the number of wells or whatever that were not available
21 for measurement summer to November. It struck me that a
22 reason could be that the wells weren't able to be
23 measured because the ground had moved and closed the
24 wells." You see that sentence?

25 A. Yes, I do.

1 Q. You are aware, are you not, that over the
2 three year period of this water level monitoring work at
3 the KIF plant, nearly half of the piezometers that were
4 used for that exercise were either destroyed or covered
5 with ash and became unserviceable are you not?

6 A. I don't recall that half were. The ones that
7 you just referred to as covered with ash weren't
8 actually piezometers. They were monitoring wells that
9 were located within hydro Dredge Cells 1, 2 or 3 that
10 were covered with ash, as you said, through the planned
11 vertical expansion.

12 There were some piezometers along the western
13 slope that during periodic mowing might have been cut
14 flush to the ground or the upper casing that is exposed
15 from the ground cut with a bush hog or some sort of
16 mowing equipment. We had staff that periodically came
17 in and repaired those.

18 The number of piezometers was such that if one
19 or two or three even in a row were unable to be read at
20 any given point in time, it was such that it wasn't
21 significant. We had I believe 33 along that remediation
22 area and with just the sheer number that was there
23 provided some redundancy so if some were unable to be
24 read it wasn't of concern.

25 Q. Do you know where I started that question? I

1 just asked if half of them were destroyed or covered
2 with ash over the three year history of this well, of
3 this water level monitoring exercise. Is your answer to
4 that question yes or no?

5 A. I don't recall.

6 Q. Okay. Well, Mr. Williams did recall last
7 week. It was his testimony that in fact half were
8 either destroyed or covered with ash in the three year
9 period that TVA was monitoring the piezometers out at
10 KIF. Will you accept his testimony as true?

11 A. I don't doubt that Matt said that. I am sure
12 that he didn't state just that and stop. I am sure he
13 would have said the same thing. He in fact had a
14 technician that helped repair those. Matt was aware the
15 ones covered with ash are part of the expansion.

16 Q. Let's see exactly how he put it.

17 MR. MARQUAND: This is improper
18 impeachment. This is not this witness' prior testimony.
19 This witness was not present during that testimony.

20 THE COURT: I will sustain the objection.

21 BY MR. BYRNE:

22 Q. You would defer to Mr. Williams to the number
23 of piezometers destroyed or covered with ash and became
24 unserviceable under that monitoring period would you
25 not?

1 A. I didn't understand the first of your
2 question.

3 Q. You would defer to Mr. Williams, his memory,
4 his knowledge and his testimony on the issue of the
5 number of piezometers that over a three year monitoring
6 program were either destroyed or became unserviceable
7 due to being covered up by ash stacking?

8 A. I can't speak to the accuracy of Matt's
9 testimony. I believe I just provided my account of what
10 took place.

11 Q. You never went out there and measured anything
12 having to do with piezometers, did you?

13 A. I did not measure piezometers, but I
14 frequently toured the site.

15 Q. Did you ever measure them? Yes or no?

16 A. I did not have to measure them.

17 Q. That is the question. Did you ever measure
18 the piezometers yourself?

19 A. No, I did not.

20 Q. Mr. Williams and his crew did, did they not?

21 A. As I understand it, Mr. Williams did not. He
22 had a technician that performed that service for him.

23 Q. Okay. But Mr. Williams helped put all that
24 together, put the punch list of corrected activities
25 that needed to be taken on those wells, interfaced with

1 you in fact a little bit on that issue about corrective
2 actions that needed to be taken for certain wells?

3 A. Yes, Matt and I did interact on making repairs
4 to some of the piezometers.

5 Q. Pull if would, Plaintiff's Exhibit trial
6 Exhibit 245 from your stack, please, sir. Do you have
7 that in front of you, sir?

8 A. No, I don't.

9 Q. Do you have it in front of you now, sir?

10 A. Yes, I do.

11 Q. This appears to been an e-mail chain that you
12 were involved in that begins with an e-mail from Matt
13 Dallas Williams to you on Friday August 22, 2008. Do
14 you see on the last page?

15 A. I see the e-mail was directed to Chris Buttram
16 and I was cc'd.

17 Q. Okay, let me ask first, is this an e-mail
18 string involving a series of e-mails you either sent or
19 received in the ordinary course of business of TVA?

20 A. Yes, it is.

21 MR. BYRNE: Your Honor, we offer
22 Plaintiff's Exhibit 245 at this time.

23 MR. MARQUAND: Objection. This was
24 already received during Mr. Williams' testimony.

25 MR. BYRNE: I apologize. I will withdraw

1 that.

2 BY MR. BYRNE:

3 Q. If you will look on the very first --

4 THE COURT: Ms. Norwood is indicating to
5 me it was used, but perhaps not admitted.

6 MR. MARQUAND: No objection.

7 THE COURT: Out of an abundance of
8 caution, we'll admit Plaintiff's 245 at this time.

9 (Exhibit No. P-245 was received in
10 evidence.)

11 BY MR. BYRNE:

12 Q. Beginning on bates page 413374, that is the
13 last page of Plaintiff's Exhibit 245, Mr. Williams tells
14 Mr. Buttram and cc's you on the same communication in
15 paragraph number one, "Mowing has damaged or destroyed a
16 significant amount of piezometers. Would you be okay if
17 we set up some additional flagging?" You see that?

18 A. Yes, I do.

19 Q. Do you recall during that time frame that
20 Mr. Williams simply wanted to get some bicycle flags up
21 so people would quit running over his piezometers with a
22 lawn mower?

23 A. Yes, I do.

24 Q. He asks in the last paragraph whether
25 Mr. Buttram, and I assume you as well, want him to

1 continue the monitoring into fiscal year '09. If so, we
2 need to come up with a plan. You see that?

3 A. Yes, I do.

4 Q. After a couple of weeks Mr. Williams returned,
5 if you will turn to the second page, e-mails you
6 directly on September 5, 2008, and turning the page to
7 the last paragraph he asks "Did you get a chance to
8 review my other two questions below concerning
9 additional flagging of the wells at risk for mowers and
10 continuation of our monitoring of the dredge cell into
11 fiscal year '09." Do you see that?

12 A. Yes, I do.

13 Q. Okay. You told Mr. Williams, did you not,
14 that you did want him to continue the monitoring work at
15 KIF, correct?

16 A. Yes, I did.

17 Q. And you told him that you wanted him to make
18 the necessary minor repairs, flags, addition of things
19 like that, right?

20 A. Yes, I did.

21 Q. We jump ahead to the 9th, September 9th. We
22 ask Mr. Williams how much he thinks the repairs and
23 flags will cost. You were talking about the repairs to
24 the damaged piezometers, right?

25 A. Or damaged dewatering well points.

1 Q. Okay. And Mr. Williams comes back and tells
2 you flags will run you about fifty to a hundred dollars,
3 is that right?

4 A. That is what he said, yes.

5 Q. Okay. And he told you that on, or you guys
6 concluded your discussion about the bicycle flags and
7 repairs on September 10th. Why did it take so long?
8 Why did it take from August 22 to September 10 to get
9 that sorted out with the repairs and bicycle flags to
10 keep people from mowing over the piezometers?

11 A. If you are familiar with the mowing frequency,
12 as well as monitoring frequency with the dewatering well
13 points and piezometers, that's not a great deal of time.

14 Q. You never did get all of the piezometers up
15 and running for the last data set that came in before
16 December 22, 2008, did you?

17 A. I don't recall if all of them were in place.
18 I do recall testifying just a moment ago that even if
19 all of them were not in a readable condition, that that
20 was not anything of concern.

21 Q. I heard that testimony. What I am asking is
22 is it not true that for that last data set, that
23 November 2008 data set that was collected prior to the
24 December 22, 2008, ash release, you still had a number
25 of piezometers that weren't functional, correct?

1 A. I don't recall the exact number. I do recall
2 that some weren't functional, but it is important to
3 note --

4 Q. Some were what, sir?

5 A. Some were functional, some were not. I don't
6 recall the number.

7 Q. Your answer to my question is yes, right?

8 A. Please restate your question.

9 Q. I have stated it several times. I don't
10 understand why you are fighting me with this.

11 A. I have answered you several times.

12 Q. All I am asking is, sir, for the last
13 November, 2008, water level data collection effort isn't
14 it true that a good number of those piezometers were not
15 in service still; yes or no?

16 A. I don't understand what you mean by good
17 number.

18 Q. More than ten?

19 A. I don't recall. I would have to look back at
20 the data that was provided for the November readings to
21 answer that question.

22 Q. Okay. Let's go back to 606. I am going to
23 have to introduce an entirely new exhibit now to go
24 through this, but we'll do it.

25 Can you tell from 606 how many of your

1 piezometers were out of commission for that last
2 November sampling event?

3 A. The page that is bated stamped ending 139 it
4 doesn't appear that any are.

5 Q. You don't think any of them were out of
6 commission as of November, 2008?

7 A. I believe what I said is from the page bated
8 stamped ending 139 from the November -- I am sorry that
9 is November of '07.

10 Q. That is November of '07. The time period at
11 issue here is November of 2008.

12 A. The information contained on the page that is
13 bated stamped ending 151 it seems to indicate that there
14 was water level found in all of piezometers or well
15 points that are contained in the two tables at the top
16 of the page.

17 Q. So that reference to dry, you see that?

18 A. Yes, I see the reference to dry.

19 Q. Do you have any idea what that means?

20 A. There is some language somewhere previous in
21 this exhibit or another that explains how to key these.
22 I don't recall if "dry" means that a water level wasn't
23 found. I don't understand what "dry" means, when I read
24 the word "dry."

25 Q. It doesn't mean it was dry, does it? It means

1 they couldn't collect a water reading because the
2 piezometer wasn't functional. Isn't that true?

3 A. I don't know.

4 Q. You really don't know. Even as of today you
5 don't know the answer to that question?

6 A. I have had no reason to research the question.

7 Q. You did a lot of research on piezometers, well
8 points, monitoring wells in the weeks and months
9 following the incident didn't you?

10 A. I did a lot of research in addition to my
11 normal day to day activities.

12 Q. Mr. Dotson, you know, do you not, that that
13 reference to dry, and there must be I mean, there must
14 be 20 of them, all means that you couldn't collect a
15 sample, you couldn't collect a valid water level from
16 that piezometer or well point because it was damaged,
17 destroyed or out of operation, right. You know that?

18 A. I believe what I testified was I don't know if
19 dry means a water level wasn't found in the well or if
20 it was not able to be read. I don't have the answer to
21 your question. I am sorry.

22 Q. Well, if that is what Mr. Williams said, would
23 you rely on this testimony?

24 A. I have no reason to disagree with what Matt
25 has testified to.

1 Q. Okay. If he testified that that dry
2 designation does not mean there wasn't water in the
3 well, on the contrary, it simply meant that a valid
4 measurement couldn't be made because of damage or
5 problems that made the well unserviceable, you would not
6 quibble with that testimony, would you?

7 A. No, I wouldn't. Looking at the data it is
8 evident that a lot of these weren't piezometers. They
9 were indeed the dewatering well points. There are
10 several of those listed as dry as well. Looking at the
11 sheer number of drys that are shown here, that's not
12 really indicative of much information to me.

13 Q. Okay. Let's count them together, okay. I can
14 tell you are a precise man. Let's get a precise count.
15 Let's start at the top. PZ-101, dry. 105, that is two.
16 106, that is three. 107, that is four. 113, that is
17 five. 114, that is six. 115, that is seven. 117, that
18 is eight. 118, that is nine. 119, that is ten. 123,
19 that is eleven. 32, that is twelve. 31, that is
20 thirteen. 30, that is fourteen. 25, that is fifteen.
21 34 is sixteen. 35, that is seventeen. 126, that is
22 eighteen. 127, that's nineteen. 129, that's twenty.
23 131 that's twenty-one. 134, that's twenty-two. 22
24 piezometers showing dry, as Mr. Williams testified,
25 unserviceable piezometers. You counted along with me,

1 didn't you?

2 A. Yes, you did a very good job.

3 Q. Did we get that exact number correct?

4 A. Yes, we did.

5 Q. Okay. It isn't good to have any equipment out
6 of service, especially when it's used to measure the
7 amount of water saturation in that dike system at KIF,
8 is it. You disagree? You were shaking your head.

9 A. I was waiting on a question. You made a
10 statement.

11 Q. It's not good to have any piezometers out of
12 service when the intent of same is to measure the degree
13 of water saturation in the dikes at KIF, is it?

14 A. As I previously stated, there was a level of
15 redundancy there such that if two or three in a row were
16 damaged, it was of no significance.

17 Q. You didn't have two or three in a row, sir.
18 You had 22 out of service, did you not?

19 A. Are you aware of the location of that 22?

20 Q. Does it matter, sir?

21 A. I believe I have answered previously.

22 Q. You only had how many well points? How many
23 piezometers did you have?

24 A. There were 33 in the initial remediation area.

25 Q. And 22 --

1 MR. MARQUAND: Can the witness be allowed
2 to complete his answer.

3 THE COURT: Let him finish his answer.

4 BY MR. BYRNE:

5 A. There were 33 in the area of the initial
6 remediation. As you saw when you were counting the ones
7 labeled dry, the numbering system went up as high as 137
8 so if indeed there were 137 and twenty plus were or a
9 sixth were out of commission, that is not significant to
10 me.

11 Q. How many piezometers did you say all total you
12 had on the dike system?

13 A. I said if indeed there were 137.

14 Q. You don't know if there were or not do you?

15 A. Looking at this sheet here, there weren't 137.
16 I am not sure of the exact number.

17 Q. You know there weren't. You know how many are
18 depicted in this table don't you?

19 A. Without counting I am not certain.

20 Q. Count them. You want to count them, we'll
21 count them. Please, how many piezometers?

22 A. Would you like me to count them?

23 Q. I would like you to physically count them,
24 yes, sir. That is about where we are on this. Count
25 them up.

1 A. I count 51 piezometers.

2 Q. Okay, 51 piezometers. 21 or excuse me, 22
3 appear to be dry or out of service. Is that right?

4 A. That's correct.

5 Q. You understood at least from the time period
6 July of 2008 to December of 2008 all this water level
7 monitoring wasn't just something TVA was doing because
8 it wanted to, it was doing it because it had to. TDEC
9 required TVA to do this, correct?

10 A. I understand that we made a commitment to TDEC
11 to implement a water monitoring program and that we
12 would follow through with that, yes.

13 Q. You committed to implementing this specific
14 program with the 51 piezometers, didn't you?

15 A. I don't recall.

16 Q. Not you, but the TVA?

17 A. I don't recall seeing any commitment to
18 monitoring 51 piezometers. I do recall seeing some
19 information that said we had 33 in place and that we
20 would perform water or groundwater monitoring as far as
21 the levels.

22 Q. Mr. Williams had asked you a lot for
23 permission to repair these piezometers. Not just you,
24 but other people besides you; Mr. Petty, Mr. Hensley,
25 Mr. Buttram, all had been asked at various times by

1 Mr. Williams for permission to go out there and do
2 something about these piezometers, isn't that true?

3 A. I am not sure who he asked outside of me. I
4 do recall that he asked me. I even recall seeing an
5 e-mail back from Matt stating that some had already been
6 repaired by an individual that worked for me.

7 Q. But that was too late to get the last set of
8 data wasn't it?

9 A. I don't recall the date.

10 Q. Because you still had 22 out of 51 out of
11 commission in November, right?

12 A. It appears we did have 22 out of 51 out of
13 commission in November, correct.

14 Q. Okay. Let me ask you this question. You, I
15 believe, you were a project lead, I think you said, on
16 the lateral expansion dredge cell construction?

17 A. Yes, I was.

18 Q. How far did you say you got with that before
19 the December 22, 2008 incident?

20 A. The construction on the lateral expansion on
21 the dredge cell had commenced to the point where we had
22 the external dikes above the surface of the water level
23 of the ash pond and we were dredging material from the
24 ash pond into the center of what was the planned
25 expansion.

1 Q. As of when?

2 A. As of December 22, 2008.

3 Q. Well, on the days or weeks leading up to the
4 December 22, 2008, was it not true that you already had
5 the water and ash levels in the expansion dredge cell as
6 high as the adjoining cell, is that accurate?

7 A. Can you define adjoining cell?

8 Q. Adjoining cell, the cell that was right next
9 to the dredge cell, the lateral expansion dredge cell.

10 A. The cell that joined the lateral expansion was
11 actually Cells 1 and 2 which were much higher than the
12 lateral expansion cell.

13 (Exhibit No. P-254 was marked for
14 identification.)

15 Q. Turn, if you would, to Plaintiff's Trial
16 Exhibit 254. That should be in front of you. I think I
17 made a mistake there when I referenced the adjoining
18 dredge cell. Please forgive me. I meant to say is that
19 the ash material sluiced into the area of the lateral
20 expansion dredge cell was at or near the same elevation
21 of the water in the dredge cell where the dredging
22 equipment was sitting. You see what it says in 254?

23 Why don't we start, let's start from the
24 beginning there. Plaintiff's Exhibit 254 appears to be
25 a November 7, 2008, e-mail from a James Catlett to you

September 26, 2011/Dotson/Direct

1 and Melissa Hedgecoth entitled "KIF Lateral Expansion."

2 You see that?

3 A. Yes, I do.

4 Q. Did you receive this e-mail from Mr. Catlett
5 in the ordinary course of your business at TVA?

6 A. Yes, I did.

7 MR. BYRNE: Your Honor, we offer
8 Plaintiff's Exhibit 254 at this time.

9 MR. MARQUAND: Your Honor, I object on the
10 grounds of relevancy, unless it can be shown -- the
11 lateral dredge cell is not in the area of the failure
12 and is not an issue in this case. It was never built.

13 THE COURT: Your response Mr. Byrne.

14 MR. BYRNE: Yes, Your Honor. By November
15 7, 2008, the wet ash that had been sluiced into the
16 lateral expansion dredge cell, according to this e-mail,
17 had reached the same level as the water level in the
18 adjoining dredge cell such that it created another
19 significant source of pressure on what I think we have
20 shown were already unstable dikes.

21 THE COURT: I will admit Plaintiff's 254.
22 You may go ahead.

23 (Exhibit No. P-254 was received in
24 evidence.)

25 BY MR. BYRNE:

1 Q. Turning your attention back to Exhibit 254,
2 Mr. Dotson, Mr. Catlett here is telling you he is
3 sending you some photos of the KIF project that show the
4 material sluiced in the area of the lateral expansion.
5 You see that?

6 A. Yes, I do.

7 Q. And Mr. Catlett goes on to say that "The
8 material -- meaning ash sluiced into the area of the
9 lateral expansion -- is real near the same elevation of
10 the water in the dredge cell where the dredge is
11 sitting." Now, was that an accurate statement as of
12 November 7, 2008?

13 A. It appears to be accurate of what Harold
14 Catlett saw on November 7, 2008. I don't recall for
15 myself on that exact date. I do recall on or near that
16 timeframe the lateral expansion to the dredge cell had
17 been dredged into such that the ash within the confines
18 of the still under construction perimeter dikes was
19 approximately at the elevation of the water level in the
20 ash pond, or what Harold Catlett calls the dredge cell.

21 Q. Okay. It was the same level as the existing
22 ash pond, correct?

23 A. Yes, same level.

24 Q. Okay. Now, the TVA was using the new lateral
25 expansion dredge cell for disposal of sluiced coal ash

1 directly from the Kingston plant even in the fall of
2 2008, wasn't it?

3 A. Not directly from the plant, no. The fly ash
4 was actually discharged from the end of the sluice lines
5 into a trench. The ash flowed from the trench into the
6 ash pond at which point the hydraulic dredge sucked, if
7 you will, the material from the ash pond into another
8 location within the confines of the actual ash pond.

9 Q. Maybe this is an easier way to put it. In the
10 fall of 2008 TVA was already sending and sluicing coal
11 ash into the new lateral expansion dredge cell, correct?

12 A. We weren't sluicing ash, we were dredging ash.

13 Q. You were adding ash to it?

14 A. May I finish my statement, please?

15 THE COURT: Go ahead.

16 BY MR. BYRNE:

17 Q. Go ahead.

18 A. As I was saying, we were sending the material
19 into the ash pond and through the planned construction
20 and the approved technique we were using we were indeed
21 taking that ash from the ash pond and placing it into
22 the planned expansion to the dredge cell, the lateral
23 expansion, yes.

24 Q. So, in the fall of 2008 you were already
25 adding ash to the new lateral expansion dredge cell?

1 A. As part of the planned construction, yes.

2 Q. So your answer is, yes?

3 A. Yes, it is.

4 Q. Now, you said as part of the planned
5 construction. Part of the planned construction was to
6 make sure that a bottom drainage layer had been
7 installed in the lateral expansion dredge cell. Isn't
8 that true?

9 A. There was a drainage layer that was designed
10 to plan at a certain elevation within the lateral
11 expansion.

12 Q. It hadn't been completed. You didn't have the
13 whole thing completed before ash started getting
14 deposited in the dredge cell?

15 A. We had not reached an elevation yet that
16 required that drainage layer to be installed. We were
17 still constructing the elevations that were beneath the
18 designed drainage layer.

19 Q. What designs are you talking about?

20 A. The design that Worley Parsons had provided to
21 TVA.

22 Q. You talking about design drawings? You
23 talking about according to design drawings?

24 A. There were some drawings prepared that were
25 used to acquire a permit. Within the permit drawings

1 there was a planned drainage layer that was above the
2 level of the ash pond surface and above the level at
3 which we were currently working.

4 Q. Okay. Were those drawings, I mean, did they
5 prove to be accurate or inaccurate on that point?

6 A. Could you define "accurate or inaccurate at
7 that point."

8 Q. You said you hadn't quite reached that point
9 where you had to put this drainage layer, done this
10 additional drainage layer construction because it hadn't
11 reached that point of the plans. I am asking at some
12 point in time did you discover that there was a problem
13 with the plans?

14 A. I discovered that for construction to continue
15 above where we were, or much further, we would have had
16 to have had additional details provided to the drawings.
17 The drawings that we submitted to TDEC were sufficient
18 enough to obtain a permit, but as a practice when we
19 submit permit drawings we intentionally don't include
20 minute design details because through the course of
21 construction things might require a change. Through
22 that change if you deviate from a permit drawing you
23 have to go back to the regulator for approval.

24 Through our relationship with the TDEC we
25 would submit drawings sufficient enough for them to

1 understand the intent of the design and then once we
2 received the permit we would commission someone to take
3 the permit drawings and provide construction drawings
4 that included all of the finer details that were
5 required for a complete build out.

6 Q. Who created the initial drawings that were
7 sent to TDEC?

8 A. Worley Parsons created the permit drawings
9 sent to TDEC for the lateral expansion to the dredge
10 cell.

11 Q. And who prepared these more detailed post
12 permit construction drawings?

13 A. We were in process of having someone prepare
14 those, when the ash release occurred in December of
15 2008.

16 Q. Right. Who was doing that work for you?

17 A. At that point it was yet to be determined.
18 There were a few firms that we had talked about. Worley
19 Parsons was one of those.

20 Q. Now, if I am not mistaken, you were already
21 doing the construction work when all of this
22 construction plan work was going on, right? You had
23 already been constructing the lateral expansion dredge
24 cell post permit. You had already begun adding ash to
25 the lateral expansion dredge cell before you ever got

1 anywhere on those construction plan drawings from Worley
2 Parsons, right?

3 A. The construction that had taken place was
4 performed with the permit drawings. For the level of
5 work that we had performed, there were sufficient detail
6 contained on the permit drawings. For us to have gone
7 much further, we would have needed additional details.

8 Q. In fact, you told your fellow engineers at TVA
9 that you weren't happy about the fact that you were
10 having to construct this thing with nothing more than
11 permit drawings, didn't you?

12 A. No, I did not. What I did do is express
13 concern because I was under the impression when I took
14 the job over that we already had construction drawings.
15 I didn't realize that I was working with the permit
16 drawings. I did express concern that Worley Parsons had
17 not included enough details for us to build out the
18 lateral expansion. Once I dug into it a little more
19 deeply, I found we were actually using the permit
20 drawings and that the work had commenced at someone's
21 approval with the use of those drawings and that we were
22 not yet at a level that required the additional details
23 that would be contained in construction drawings.

24 Q. When did work commence? When did the first
25 field work, construction work, commence on the lateral

1 expansion dredge cell project post permit?

2 A. Without referring back to notes, I would say
3 in the winter, January/February time frame, possibly of
4 '08, maybe a little later in the fall or early winter of
5 '07.

6 Q. Winter of '08 meaning the January or February
7 timeframe or late '07?

8 A. Without looking at notes, I would estimate
9 late '07 calendar year or early calendar year '08.

10 Q. Back to Plaintiff's Exhibit 248. You have
11 that in front of you?

12 (Exhibit No. P-248 was marked for
13 identification.)

14 A. I apologize. There is no particular order in
15 which these files are placed in the expandable folder.

16 Q. This appears to be an e-mail chain that you
17 were involved in that begins as early as October 28th,
18 2008, and concludes on November 13th, 2008, and each
19 e-mail regards the KIF ash lateral expansion. You see
20 that?

21 A. Yes, I do.

22 Q. This appears to be a series of e-mails which
23 you either sent or received in the ordinary course of
24 business of TVA, correct?

25 A. That is correct.

1 MR. BYRNE: Your Honor, we offer
2 Plaintiff's Exhibit 248 at this time.

3 MR. MARQUAND: No objection.

4 THE COURT: So admitted.

5 (Exhibit No. P-248 was received in
6 evidence.)

7 BY MR. BYRNE:

8 Q. Turn, if you would, to the second to the last
9 page that is bates 407301 to the e-mail from William
10 Perry dated October 28, 2008. Do you see that?

11 A. Yes, I do.

12 Q. Who was William Perry?

13 A. William Perry was a heavy equipment operator
14 who was serving as the foreman for the Heavy Equipment
15 Division. He was the project superintendent over the
16 construction of the lateral expansion.

17 Q. He says here, "Prints need verification that
18 the prints on site will be revised and adjusted to meet
19 the criteria of the approved construction prints.
20 Prints have a date of April, 1981." Do you see that?

21 A. Yes, I do.

22 Q. Were you at that point in time, October 2008,
23 was construction following a series of prints that dated
24 back to 1981?

25 A. I am not sure why William used that date. We

1 were not, we were actually using permit drawings that
2 would have been dated around 2005 or '6, as my memory
3 serves me.

4 Q. Well, you responded to several people just
5 above that on November 5, 2008, and you say, "Right now
6 we are in a holding pattern on this job. The drawings
7 are incomplete at best." You see that?

8 A. Yes, I do.

9 Q. It says, "I plan to speak with Barry this week
10 and see what we need to do to get a set of construction
11 drawings prepared. I realize this will take time so I
12 am also in the process of trying to determine what we
13 can do in the meantime to keep the project moving." Did
14 I read that correctly?

15 A. It appears that you did, yes.

16 Q. Let me make sure I have got this straight.
17 Was construction going on for this lateral expansion
18 dredge cell at KIF from somewhere around January of 2008
19 all the way to November of 2008 just off permit drawings
20 and not actual construction drawings?

21 A. As I testified a moment ago, the construction
22 that had taken place from whenever it started through
23 this timeframe had taken place with permit level
24 drawings that contained enough details for the work that
25 we were currently undertaking. William's concern was

1 that at some point in the future he would not be able to
2 continue work because he didn't have details to continue
3 working.

4 Q. When did you first realize -- excuse me, he
5 couldn't continue working because it wasn't safe to
6 continue working, isn't that true?

7 A. No, I disagree. What we were doing out there
8 was standard practice. It was safe.

9 Q. But you might have a permit -- if it was safe,
10 why did you need the construction drawings?

11 A. To continue the construction we needed
12 drawings that contained other details. For example, a
13 spillway. You mentioned earlier the dikes of the
14 lateral expansion had material within the lateral
15 expansion that were at or near the elevation of the
16 phreatic surface or water surface, I am sorry, in the
17 ash pond.

18 To continue to elevate those external dikes
19 and the material that is contained within those, we
20 would have had to have installed a spillway structure to
21 allow the water that comes from the dredge when the
22 dredge pumps material into the cell -- it's an ash/water
23 solution where there's about 20 to 25 percent fly ash
24 and 75 to 80 percent water. The water that you are
25 placing in that cell has to have a place to escape.

1 The plan was to install a spillway structure
2 that would allow that water to decant back into the ash
3 pond. Details such as that were needed to continue with
4 the construction.

5 Q. Did you stop all of the dredging into the
6 lateral expansion dredge cell from that point in time,
7 November, 2008 through December 22, 2008, so that you
8 could go out and get these good construction drawings
9 done?

10 A. I don't know at this point in time whether we
11 had reached a point where we had to stop. William's
12 concern was we would be nearing that point in the
13 future. We needed to get information to allow him to
14 continue to work.

15 Q. Let me see if I have got this straight. From
16 early November of 2008 through December 22, 2008, you
17 kept dredging in the lateral expansion dredge cell while
18 simultaneously trying to get someone to get you actual
19 construction drawings so you could continue that work?

20 A. I believe I testified I am not sure if we were
21 continuing to dredge. I did say we are not yet at the
22 point where we required more information.

23 Much like if you need an exhibit to present in
24 court today you wouldn't ask for it at 8:59 a.m., you
25 would get it well in advance.

1 Q. I wouldn't try to question the witness without
2 the exhibit either. My question is were you still
3 dredging in that lateral expansion dredge cell in
4 November and December despite knowing full well at that
5 point you didn't have accurate construction drawings?

6 A. I disagree with several things in you're
7 question. It was not that we didn't have accurate
8 construction drawings for the level of construction that
9 was taking place. Indeed we did.

10 Q. Did you just say --

11 A. May I continue?

12 Q. You said you think you did?

13 A. May I continue?

14 Q. Certainly, sir.

15 A. I will restate. We had drawings of a permit
16 level that contained sufficient details for the
17 construction that is taking place and for the
18 construction that could potentially take place for some
19 point in time.

20 William's concern was if we continued without
21 making progress on getting the additional details that
22 we needed that at some point in time he would no longer
23 be able to work and we would have to stop construction
24 on the project. His concern was about getting details
25 for future work activity, not details for existing

1 activities.

2 Q. But then you say on November 5th the drawings
3 are incomplete at best?

4 A. I testified previously that at that point in
5 time I was under the impression these were the
6 construction drawings. This project had been handed off
7 to me and when I took ownership of it I was under the
8 impression these were the construction drawings.

9 Q. When was it handed off to you?

10 A. At some point late in 2007.

11 Q. So from late 2007 up until November of 2008
12 you have done all this construction out there on the
13 lateral expansion dredge cell without ever knowing that
14 what you were using in the way of plans was just permit
15 drawings, not construction drawings?

16 A. For the work that we completed?

17 Q. Yeah.

18 A. The work that we were performing?

19 Q. Yeah.

20 A. We had adequate details. It wasn't until --

21 Q. Now I'm going to interrupt you. You are not
22 answering my question.

23 A. I have done that several times.

24 Q. My question to you is from the time you took
25 ownership of this project in late 2007 until November of

1 2008, when this e-mail chain started up, you had no clue
2 that what you were using to do all this construction
3 work were just simple permit drawings, isn't that true?

4 A. I don't really agree with your
5 characterization of simple.

6 Q. Didn't you just testify to that effect?
7 Didn't you just tell us you didn't know?

8 MR. MARQUAND: Can the witness complete
9 his answer? He has disagreed with counsel's question
10 and he was explaining.

11 MR. BYRNE: I will withdraw it, Your
12 Honor.

13 THE COURT: Why don't we take a morning
14 break, ten minutes.

15 (Off the record.)

16 (Back on the record.)

17 BY MR. BYRNE:

18 Q. Turn, if you would, Mr. Dotson, to Plaintiff's
19 Trial Exhibit 255.

20 (Exhibit No. P-255 was marked for
21 identification.)

22 A. Yes, sir.

23 Q. While you are doing that, if you can also pull
24 1758, Exhibit 1758.

25 (Exhibit No. P-1758 was marked for

1 identification.)

2 A. Yes.

3 Q. Let's start with Exhibit 255. This appears to
4 be an e-mail from an A.J. Monsees to you and Melissa
5 Hedgecoth. It's dated December 12, 2008. Do you see
6 that?

7 A. Yes, I do.

8 Q. And the subject line reads "KIF pictures" and
9 the attachments are labeled "RKQ_stuck.pdf." Do you see
10 that?

11 A. Yes, I do.

12 Q. Is this an e-mail you received in the ordinary
13 course of business of TVA?

14 A. Yes, it is.

15 Q. There is a series of photographs or photograph
16 attachments that follow beginning at bates 338598 and
17 continuing through page 338601. Do you see that?

18 A. Yes, I do.

19 Q. Did you receive all those photographs as part
20 of this e-mail from Mr. Monsees?

21 A. Yes, I did.

22 Q. And finally, Exhibit 1758, so we can introduce
23 those all together, appears to be a color photo that TVA
24 furnished us, two color photos as a replacement for the
25 last two photos, black and white photos, on the last

1 page of exhibit 255. Is that what 1758 represents?

2 A. Yes, the Exhibit 1758 does represent the two
3 photographs contained on bates number ending 60.

4 MR. BYRNE: At this time plaintiff's offer
5 Exhibits 255 and 1758 into evidence.

6 MR. MARQUAND: No objection.

7 THE COURT: So admitted.

8 (Exhibit Nos. P-255, 1758 were
9 received in evidence.)

10 BY MR. BYRNE:

11 Q. Who is A.J. Monsees?

12 A. A.J. Monsees is currently in the form of
13 management in TVA's Surveying Department.

14 Q. Was he doing some surveying work out of the
15 KIF dikes before sending this December 12, 2008 e-mail?

16 A. A.J. was not, no.

17 Q. Okay. Was one of his crews, did he have a
18 crew out there doing some survey work shortly before he
19 sent this December 12, 2008 e-mail?

20 A. Yes, A.J. did have a surveying crew working on
21 the lateral expansion on the Kingston dredge cell around
22 this time frame.

23 Q. If we can go back to the diagram we started
24 with to give the Court a sense of where we are doing all
25 this work. Let's pull up Exhibit 59 for a second. Can

1 you point out the area on this map that was the subject
2 of the lateral expansion dredge cell construction
3 project?

4 A. Would you like me to show the outline of the
5 lateral expansion?

6 Q. Yes.

7 A. This isn't a very good depiction. It is in
8 the general area that I have shown. It was horseshoe
9 shaped with the northwestern boundary being made up of
10 the existing lateral expansion to the dredge cell and
11 the lower slopes of the Dredge Cell Number 2.

12 Q. Okay. Let's -- let's go back then. Let's
13 keep that up for just a second, but let's turn your
14 attention back to Exhibit 255. Here is what Mr. Monsees
15 says in this December 12, 2008, e-mail. "Here are a few
16 quick pictures of KIF. Those dikes are the softest
17 dikes that I have ever been on. Not sure what material
18 is being used overall, but you can sink quickly without
19 notice, as Randy did in these pictures and we did
20 yesterday finishing the survey."

21 I assume Randy was the gentleman that we saw
22 pictured on 1758, correct?

23 A. Yes, I understand that is Randy Quarrels.

24 Q. Randy who?

25 A. Quarrels.

1 Q. Randy Quarrels, okay.

2 All right, go back to this map just a moment
3 before we pull the pictures back up. This photo 1758,
4 do you happen to know where Mr. Quarrels was standing,
5 when he sank in up to his above his knees?

6 A. Looking at the photo alone it's hard to tell
7 where Randy was standing.

8 Q. But it was somewhere along this blue outline?

9 A. It was on the dike of the lateral expansion
10 that I have depicted with the blue outline.

11 Q. Okay. All right. Let's take down the map
12 just a moment and look at the pictures. Let's go to the
13 next page, to the first page of the black and white
14 photos. I am not so interested in the photos as the
15 captions. The captions on the photos, were those put in
16 place by Mr. Monsees or someone on his crew?

17 A. I am not sure who put the captions on the
18 photographs. All I know is that A.J. Monsees sent the
19 e-mail that contained the .pdf attachments that were
20 actually these photographs with the captions.

21 Q. Okay. Let's go to the picture at the bottom
22 of that page, if we can. The caption reads, "Notice
23 that the area inside this newest dike being built seems
24 to be pretty much full. There is no way we can get near
25 it or inside to survey this area." You see that?

1 A. Yes, I do.

2 Q. And this new dredge cell he is referring to,
3 that's the lateral expansion dredge cell itself?

4 A. Yes, it is.

5 Q. Did you understand that Mr. Monsees surveying
6 crew at least as of December 12, 2008, couldn't even get
7 in there to survey it was so full?

8 A. My understanding of the task that was put in
9 place for AJ's crew was to survey the centerline of the
10 exterior dike and possibly the offsets that would
11 delineate the crest of the dike on either side. I
12 wasn't aware that they were to be inside the sluiced
13 material. As a matter of fact, had I been known or had
14 I known they had been tasked with that, I would have
15 asked that they not have done that. That is sluiced
16 material and it is not intended to be walked upon.

17 Q. Let's go back to the Plaintiff's Exhibit 1758.
18 What is your particular opinion of what this gentleman,
19 Randy, is standing in?

20 A. It appears that Randy is standing on one of
21 the dikes of the lateral expansion. He is standing near
22 the edge on fly ash.

23 Q. What did you say Mr. Monsees' position was
24 with TVA, as of December of 2008?

25 A. At that point I believe Mr. Monsees was the

1 equivalent of a principal engineer. He would have
2 directed the work of subordinate engineers or surveyors.

3 Q. He was above you, correct, in the chain of
4 command?

5 A. As of December 22nd, 2008?

6 Q. Yes, sir.

7 A. I don't necessarily agree with that. We
8 weren't in the same organizations. I was on the
9 management scale. He was on the engineering scale. He
10 was a principal engineer. I was a program manager.

11 Q. Do you know how long Mr. Monsees was, had been
12 with TVA as of the 2008 time frame?

13 A. I have no idea.

14 Q. Do you know whether he is a long-time employee
15 of TVA?

16 A. I am not sure of his tenure with TVA.

17 Q. Do you know if he does a good bit of work that
18 involves surveying dikes, visiting the dikes in the TVA
19 fossil plant system?

20 A. I understand that the organization that
21 employees A.J. performs surveying work for all aspects
22 of any kind of construction that is ongoing at TVA, be
23 that at the hydroelectric dam, nuclear facility,
24 transmission line project or an expansion to an ash
25 disposal facility. I can't really speak to his

1 experience, as far as it relates to surveying on dikes.

2 Q. In any event, as of December 12, 2008, just
3 ten days prior to the ash release -- I think that is the
4 term you used on Thursday -- Mr. Monsees says that these
5 dikes they are surveying are "the softest dikes I have
6 ever been on." Did he say that?

7 A. I did see that that was AJ's opinion that
8 those were the softest dikes he had ever seen.

9 Q. Was that your opinion as of December 12th,
10 2008?

11 A. I wasn't really in the business of rendering
12 an opinion. I myself would not have walked on them
13 because of the level of construction they were currently
14 under, I wouldn't have walked on them. The intent of
15 the dikes at that point was they were in the process of
16 being constructed. Prior to placing any men or
17 equipment on those dikes there were other levels of
18 construction that would have taken place to stabilize
19 that material such that it would not be soft. The plan
20 was to use bottom ash as well as a reinforced biaxial
21 synthetic grid that helps distribute load. These
22 materials have been used in conjunction on top of this
23 base once this base was sufficiently compacted to make
24 it safe for people or equipment to travel on.

25 Q. This grayish material that Mr. Quarrels is

1 sunk into in the photograph, 1758, that is just fly ash,
2 right?

3 A. It's my understanding that was just fly ash.

4 Q. That is not bottom ash, correct?

5 A. That is my understanding, correct.

6 Q. And TVA was supposed to build the dikes --
7 were they supposed to build the dikes with fly ash?

8 A. It's been so long since I have looked at those
9 design drawings, I can't recall. I do remember that we
10 were going to use bottom ash at some point.

11 Q. You think that is what you promised TDEC you
12 would do, right?

13 A. As I was saying, the plan was to use bottom
14 ash and a reinforced grid to provide a stable base. At
15 that point we were going to construct the dikes above
16 that base and above the elevation where they currently
17 were.

18 Q. That is not what this material is on this
19 dike, right? That is just fly ash?

20 A. This material was adequate for the level of
21 construction that we were currently undertaking.

22 Q. Right. But you had already put fly ash
23 material and you were already using this dredge cell?

24 A. The dredge cell was under construction.

25 Q. It almost appears to be at the same level as

1 the man standing in the muck, doesn't it?

2 A. I am sorry, muck?

3 Q. The fly ash.

4 A. Your question was?

5 Q. My question is the water in this dike appears
6 to be only inches from the level that this man is, of
7 this fly ash dike, isn't that true?

8 A. That is what I previously testified to, yes.

9 Q. It can't get much fuller than that can it?

10 A. The dike doesn't get "full" as you are saying.

11 Q. If it gets any more full, he will be under
12 water, right? The there won't be a dike. The dike will
13 be overtopped?

14 A. If what gets more full?

15 Q. You see the water behind this guy,
16 Mr. Quarrels, you see all that?

17 A. Yes, I do.

18 Q. That's a mixture of water and ash, isn't it?

19 A. That is actually water. The ash would have
20 settled out beneath it.

21 Q. Okay. So the ash at the bottom. The water is
22 at the top. My point is it is just inches away from
23 overtopping this soft dike material -- well, the dike
24 that this gentleman is shovelling around in, correct?

25 A. I would look at it from the opposite

1 standpoint. Water isn't inches from overtopping. The
2 dike is inches above the water surface, as was the
3 planned construction. The plan was to raise these dikes
4 out of the surface of the ash pond.

5 Q. That didn't happen, it never happened because
6 ten days later, December 22, 2008, disaster occurred,
7 correct -- I am sorry, ash release occurred, right?

8 A. I understand the ash release did occur ten
9 days later in an area totally unrelated to the lateral
10 expansion to the dredge cell. Even if these under
11 construction dikes to the dredge cell had been breached
12 by the water that was on the exterior of them, there
13 would have been no significance because there was
14 external containment within this facility.

15 Q. You are talking about the containment that
16 this gentleman is standing on?

17 A. No, I am not.

18 Q. You don't think this impoundment, this ash
19 impoundment system with all its dredge cells, you didn't
20 view that at the time as one continuous system of cells
21 that were interconnected and could each impact the
22 other?

23 A. It is an interconnected system. They do have
24 the ability to impact each other, yes. My statement was
25 that the failure of the release occurred in an area

1 unrelated to construction that was ongoing in this
2 location and had something happened to this dike that
3 Randy is standing on, there would have been no
4 significance because the material there was not
5 considered the primary containment for the ash pond.
6 The primary containment for the ash pond was Dike C,
7 which went around the parameter and what was referred to
8 as the divider dike, which was what separated the ash
9 pond and the stilling ponds.

10 Q. You talking about the divider dike between
11 Dredge Cell 2 and 3?

12 A. No, the divider dike between the ash and
13 stilling ponds.

14 Q. You see the water in this picture with
15 Mr. Quarrels in it?

16 A. Yes.

17 Q. Where did all that go on December 22, 2008?

18 A. That water didn't go anywhere.

19 Q. It's perfectly intact, wasn't it?

20 A. As I was saying, that water didn't go
21 anywhere. The failure didn't impact this portion of the
22 facility.

23 Q. All that came out was Dredge Cell 2 water, is
24 that what you are saying?

25 A. Material from the dredge cells.

1 Q. Material, water, whatever?

2 A. As I was saying, material from Dredge Cell 2
3 and the former Dredge Cell 3 were displaced during the
4 release in 2008.

5 Q. All right. Did you have occasion to
6 participate in two annual inspections of the KIF plant
7 dike systems?

8 A. Yes, I did participate in two annual
9 inspections of the disposal facility at Kingston.

10 Q. Which ones?

11 A. All of the disposal facilities.

12 Q. I am saying which years did you participate in
13 KIF plant annual dike stability inspections?

14 A. Well, I previously said in my deposition that
15 I take exception to the term "stability" included in the
16 inspection title.

17 Q. I didn't ask you that question. We'll get
18 into you taking exception to that title in a minute. My
19 question is what two annual inspections did you
20 personally conduct or participate in at the KIF plant?

21 A. I participated in or conducted the inspections
22 that took place in December of 2007 and October of 2008.

23 Q. Okay. I believe during the December, 2007
24 inspection you were actually running that inspection and
25 actually drafted the report, correct?

1 A. I was the responsible engineer for the
2 inspection that took place during the calendar year 2007
3 and was the author of the inspection report.

4 Q. And then for the October 2008 inspection that
5 led to the fiscal year '09 annual inspection report you
6 were a participant, but not the principal inspector,
7 correct?

8 A. That is correct. I was not the person
9 responsible for leading nor drafting the report for the
10 inspection that took place in October of 2008.

11 Q. In fact, I think you testified previously that
12 you didn't review or edit any of the drafts of that 2009
13 Annual Inspection Report, is that correct?

14 A. That's correct. I did say that in my
15 deposition. After further document review I was
16 provided with a draft of that report that was written
17 based on the findings of the October, 2008 report. I
18 did see some handwriting that appeared to be mine.

19 Q. Okay. Is that handwriting that you put on the
20 report or that you put on there during the actual
21 inspection or afterwards?

22 A. No, it wasn't during the inspection. I have
23 seen a draft that has what appears to be my handwriting.
24 As far as being asked to "review" the "draft" I do not
25 recall that taking place. I do recall there were

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1 several meetings where what I call the joint project
2 team got together where we were reviewing various
3 things. At some point I made notations on what turned
4 out to be one of the drafts for the report for fiscal
5 year 2009. At the time I don't think that I was aware
6 it was a draft.

7 Q. Did you make any edits or suggested edits to
8 any of the drafts of the 2009 Annual Inspection Report
9 that actually made their way into the report?

10 A. I don't think so. The note that I saw that
11 first prompted me to recall I had written on a draft was
12 on the cover page. I wrote the name Gill Francis and
13 circled it in some sort of fashion. Then on another
14 page I had written down the chronology for some of the
15 chronology for the facility.

16 Q. Who is Gill Francis?

17 A. I am not sure what his title was, but at the
18 time of the recovery, the initial recovery efforts, Gill
19 worked in TVA's Communications Group.

20 Q. He was a Media Relations person?

21 A. He worked in the Communications Group. That
22 was probably one of his functions.

23 Q. You knew that was one of his functions, didn't
24 you? You knew he interacted with the media on TVA's
25 behalf, yes?

1 A. That is what I just stated.

2 Q. You stated he was a communications person. I
3 said involved with interacting with media?

4 A. I said that was one of his functions.

5 Q. Very good. Okay. Is he an engineer?

6 A. I am not sure of Gill's background. I doubt
7 it is in engineering.

8 Q. Was he one of the guys helping to edit the
9 draft report, the draft inspection report?

10 A. I am not sure if Gill was involved directly.
11 I do recall that the communications people were
12 assisting with the process of drafting the report.

13 Q. Did anybody from TVA's Media Relations or
14 Communications Department assist you in editing your
15 2008 annual inspection report, the one you authored?

16 A. No. When I drafted and finalized the report
17 for the December, 2007, annual inspection, no Media
18 Relations personnel reviewed the report.

19 Q. Now, during the October 20, 2008, inspection
20 you accompanied Chris Buttram and John Albright, is that
21 right?

22 A. Yes, I did.

23 Q. And did you assist them by marking what are
24 known as waypoints?

25 A. While participating in that inspection I took

1 photographs, I used a handheld GPS to mark waypoints.
2 When I noted items of interest, I would call Chris and
3 John over and as a group we could collectively look at
4 what we saw.

5 Q. I am sorry to interrupt. Is the answer to my
6 original question, did you assist them by taking
7 waypoints, yes?

8 A. Taking waypoints was one of my functions, yes.

9 Q. Listen to my question. I am trying to take
10 this step by step. You will get a chance to say
11 whatever you need to say.

12 The waypoints are a GPS plot of a location
13 where you shot a photograph that day during the
14 inspection, correct?

15 A. The waypoints were shot on areas that
16 ultimately photographs were taken of, yes.

17 Q. Okay. These waypoints, you would give them a
18 description to help identify what was at that location
19 you were shooting the GPS reading on, correct?

20 A. That is correct.

21 Q. Okay, turn, if would, to Plaintiff's Exhibits
22 190 and 189, please, sir.

23 (Exhibit Nos. P-189, 190, were
24 marked for identification.)

25 Q. Let me know when you have those in front of

1 you.

2 A. I have them.

3 Q. Let's start with Exhibit 190. This appears to
4 be a Monday December 22, 2008, e-mail from yourself to a
5 Cynthia McCowan and Melissa Hedgecoth. The subject line
6 reads "KIF monitoring/inspection data." You see that?

7 A. Yes, I do.

8 Q. Is this an e-mail that you sent to
9 Ms. Hedgecoth and Ms. McCowan in the ordinary course of
10 business at TVA?

11 A. This e-mail was sent during the ordinary
12 course of business I was conducting on the date that is
13 shown on the e-mail, yes.

14 Q. Thank you.

15 MR. BYRNE: Your Honor, we offer
16 Plaintiff's Exhibit 190 at this time.

17 MR. MARQUAND: I am not going to object to
18 this cover document, but I am going to object to the
19 document under the rule of completeness. It does
20 indicate there was two attachments to this. There is
21 only one attachment. It specifically refers to GPS
22 points which are not attached.

23 THE COURT: Is that in another document?

24 MR. BYRNE: It is, Your Honor. I think
25 you have pulled out 189, didn't you?

1 THE WITNESS: Yes, I did.

2 MR. BYRNE: I think it is in 189. I was
3 just taking it step by step.

4 THE COURT: We'll admit 190 with that
5 understanding.

6 (Exhibit No. P-190 was received in
7 evidence.)

8 BY MR. BYRNE:

9 Q. Turning back to Plaintiff's Exhibit 190. Am I
10 correct that on the day of the ash release, the December
11 22, 2008, ash release, you had sent water level
12 monitoring data around to some higher ups and now you
13 were sending around your waypoints and your waypoint
14 descriptions from the October of 2008 inspection to
15 several higher ups, is that right?

16 A. This e-mail was sent to my manager and not
17 necessarily a higher up, as you referred to her as, but
18 she was the Plant Administrator, Environmental. She was
19 responsible for all environmental activity at the plant.
20 I did send this to Cynthia and Melissa.

21 Q. You reported to Ms. McCowan, didn't you?

22 A. No, I did not report to Ms. McCowan.

23 Q. To Ms. Hedgecoth, I apologize.

24 A. Yes, I did.

25 Q. So she was your superior at that time?

1 A. Yes, she was.

2 Q. Then you say in the first line, "Cynthia, see
3 2008 inspection report attached." That is the first
4 attachment referenced in this e-mail, correct?

5 A. Yes, it is.

6 Q. And you say, "Chris Buttram has not prepared
7 writing the report for the 2009 (October 20, 2008)
8 inspection, but has updated the attached drawing with
9 GPS points that I took while performing the inspection.
10 They are simply shown as a number with a point (dot).
11 Here is a description on the numbered points."

12 These two sentences describe I guess the other
13 two attachments so let's go through the attachments. We
14 have your 2008 final report as an attachment. Then I
15 guess you are resending groundwater level or water level
16 monitoring data and then I guess this last one
17 KIFAPI2009. That is your waypoint, those are your
18 waypoint entries?

19 A. That is actually the schematic that shows the
20 waypoints, waypoint or dot.

21 Q. All right. You collected approximately 30
22 waypoints during your inspection or during the
23 inspection back in October of 2008, correct?

24 A. That's not correct.

25 Q. How many did you collect?

1 A. I collected waypoints starting at I believe
2 point 20 going through point 30 with the exclusion of
3 point 27 because it was a duplicate of point 28.

4 Q. Okay. You are saying the waypoints that are
5 described in your e-mail to Ms. Hedgecoth in Plaintiff's
6 Exhibit 190 are the only waypoints you took during the
7 October 20, 2008 inspection?

8 A. That's correct.

9 Q. Okay. Did Ms. Hedgecoth ask you to send this
10 to her on December 22, 2008?

11 A. I don't recall who made the request. It makes
12 sense that I was asked to provide that to Missy.
13 Otherwise, I don't know why I would have copied her.

14 Q. Do you know who else this was forwarded to?

15 A. I have no control of someone's e-mail account
16 once they receive something from me.

17 Q. I am not asking if you have control over it.
18 I am asking if you happen to know somebody else got this
19 after you sent it?

20 A. I am not sure who either Cynthia or Melissa
21 sent this to after I sent it to them.

22 Q. If you will turn the page in Plaintiff's 190,
23 there is a drawing here. What does this drawing
24 represent?

25 A. This is a schematic, actually. I wouldn't

1 classify it as a drawing. It represents the dredge
2 cells, the lateral expansion of the interim dredge cell,
3 the active ash disposal area or ash pond, the stilling
4 pond, the plant intake channel, a portion of the
5 peninsula area that is part of the plant proper. It
6 also shows our loaded rail yard, as well as the area
7 referred to as the ball field which contained two
8 chemical treatment ponds as well as showing a portion of
9 the powerhouse.

10 Q. All that. That is a pretty detailed
11 schematic. What I am getting at is what does that have
12 to do with the waypoints? Are the waypoints logged in
13 on this schematic in some way?

14 A. The waypoints are shown on this schematic. It
15 was later realized after I received it that all of the
16 points were shifted. The wrong datum had been used when
17 Chris initially input these into this schematic. It was
18 corrected after that.

19 Q. This is the version of Mr. Buttram's waypoint
20 schematic that was just wrong that he later had to
21 correct, right?

22 A. Yes, the datum that was used in preparing this
23 was incorrect. After the fact of me sending it out, he
24 corrected it.

25 Q. Okay. Let's look at Exhibit 189. This

1 appears to be an October 27, 2008, e-mail from you to
2 John Albright, Kelly Evans and James Buttram. Did I
3 read that correctly?

4 A. Yes.

5 Q. The title of it is "waypoints from
6 inspections." I assume this e-mail is included in the
7 attachment, an attachment or waypoint you were sending
8 to Mr. Buttram so he could include the waypoints in the
9 schematic we just looked at and in his report. I
10 realize the schematic there was some errors there. I am
11 just trying to figure out why you were sending this to
12 him.

13 A. This does contain the NAD 83 northings and
14 westerns of the waypoints for the Widow's Creek,
15 Kingston and John Sevier Fossil Plant inspections that I
16 had participated in during the month of October, 2008,
17 as well as a description of the points. In addition
18 there is also an attachment that contains the CorpsCon
19 software where I translated the points into a northing
20 and easting that can be used on the actual schematic.

21 Q. Did you see an actual schematic that
22 accurately plotted your waypoints on it?

23 A. Yes, I did.

24 Q. What would that have been?

25 A. What would it have been?

1 Q. Where was this schematic?

2 A. It was included in the final report issued in
3 2009.

4 Q. Does this appear to be the schematic that
5 includes the correct waypoint entries or does this
6 simply depict the figures, the photographic figures from
7 the report itself?

8 A. The sheet that is on the screen I can't see
9 the bates stamp. Is that bates stamp ending Buttram
10 Chris depo ending 090.

11 Q. 0000090, yes.

12 A. Yes. What this figure shows is locations of
13 photographs that were taken, the direction that the
14 photographer was facing when taking the photo and these
15 correspond to the waypoints. The waypoints themselves
16 are not shown directly on this schematic.

17 Q. Why don't we look at Exhibit 192. Let me know
18 when you are there.

19 (Exhibit No. P-192 was marked for
20 identification.)

21 Q. This appears to be one of the drafts of the
22 report. Let's go to the second last page of that
23 exhibit. There appear to be several red circles
24 including one labeled 22 on bates stamp 8219, excuse me,
25 TVK 278219, Plaintiff's Trial Exhibit 192. You see

1 that?

2 A. Yes, I do.

3 Q. Do those circles or do some of those circles
4 represent the locations of your waypoints back in
5 Exhibit 189?

6 A. Yes, they do.

7 Q. All right. Which of your waypoints from
8 Plaintiff's Exhibit 189 are depicted on this particular
9 page that is up on the screen from Plaintiff's 192?

10 A. I don't understand your question.

11 Q. Are all of your waypoints that are listed in
12 Exhibit 189 depicted in this schematic from Plaintiff's
13 192 that is up on the screen?

14 A. No, all of the waypoints contained in 189 are
15 not listed. Only the waypoints that are relevant to the
16 Kingston Fossil Plant. It appears that all of them that
17 were taken are contained on this exhibit.

18 Q. So that would include waypoint 20?

19 A. Yes, it would.

20 Q. Okay. Point to waypoint 20 on this diagram
21 that is up on the screen. Can you touch the screen to
22 show where that is.

23 A. I am having difficulty reading the figure. It
24 appears that is waypoint 20. (Indicating).

25 Q. That is waypoint 20?

1 A. Yes.

2 Q. I am sorry. I moved it. Tap the screen where
3 waypoint 20 is.

4 A. Actually I just misspoke. Unfortunately the
5 way his Excel file was plotted, the table is broken up
6 such that when you look at the waypoint number contained
7 on the middle sheet and then you go, or, I am sorry, the
8 second sheet and you go to the third sheet the numbers
9 shift one because it shows the row number, not the
10 waypoint number. Waypoint 20 is actually shown as
11 number 21 on the sheet ending bates stamped 918.

12 Q. 198 or 189?

13 A. Exhibit 189, bates stamp 198, waypoint 21.

14 Q. Where is 20? Is 20 depicted on there at all?

15 A. All of them are depicted on this.
16 Unfortunately, due on the poor quality of the exhibit, I
17 can't pick out number 20.

18 Q. Well, according to the description in 189
19 bates page 198 waypoint 20 you described as a seep, is
20 that correct?

21 A. Yes, that is the description I used. Upon
22 further -- upon further examination it looks like this
23 is waypoint 20.

24 Q. Okay. All right. So the seep that is
25 described in waypoint 20 is on the West Dike, correct?

1 A. That is correct.

2 Q. Then let's drop down to waypoint number 22.
3 That is described in Exhibit 189 or your notes in
4 Exhibit 189 as a "slough road washout." You see that?

5 A. Yes. I see that.

6 Q. Where is Exhibit 22?

7 A. Waypoint 22?

8 Q. On Exhibit 198, bates page 219.

9 A. Waypoint 22 is located right here.

10 Q. Next you have waypoint number 23. Your notes
11 read "soft spot." Where is the soft spot for waypoint
12 23? Where is waypoint 23?

13 A. (Indicating).

14 Q. Waypoint 24 is described as "hole in bottom
15 dike." Where is waypoint 24 on Exhibit 192, the
16 schematic?

17 A. It appears to be this one.

18 Q. Why don't we do this. On your copy of the
19 192, bates page 278219, let's, I am going to get you to
20 make the circles on this. Then we'll make this paper
21 Exhibit 192A. Why don't we do this for the sake of
22 time. Mr. Dotson, let's kind of go back through these
23 real quick. When you are finished marking all those
24 points, I will come and present it on the Elmo and we
25 can confirm or I can have you confirm for the Court that

1 our markings are accurate here.

2 Let's go back and if you would, if you would
3 circle the waypoint number 20, the seep which I think
4 you have drawn at least up on the screen on the West
5 Dike. Circle it on the paper. You can circle that on
6 the paper, put an arrow to it that reads seep, s-e-e-p
7 out to the side.

8 Next, if you would mark waypoint number 22
9 with a circle with a line draw out from it and then the
10 words "slough, road washout."

11 Then if you would mark waypoint number 23
12 putting a circle around it and then draw a line to it or
13 between that and the words "soft spot."

14 By the way, on waypoints 20, 22 and 23 if you
15 can put those numbers there so that it is just legible
16 with your pen in the circle area you have made so we are
17 doubly sure what we are looking at. If you can go back
18 to the waypoint 20 and just put "20."

19 A. What I have done is drawn an arrow to the
20 circle shown in red and listed the description at the
21 end of my arrow. If I try to write within the circle, I
22 am afraid you won't be able to read my writing.

23 Q. May I approach just long enough to be sure?

24 THE COURT: Why don't you see what he has
25 done so far. Let Ms. Norwood hand you the document.

1 MR. BYRNE: We'll end up marking them all,
2 but I just need to check here.

3 Very good. I wanted to make sure I was
4 following what he was doing.

5 BY MR. BYRNE:

6 Q. Okay, Mr. Dotson, I think that is moving along
7 real well. Let's plot, if we can, waypoint number 24.
8 If you can circle that, put 24 and the descriptor is
9 "hole in bottom dike."

10 Then if you would mark waypoint number 25 and
11 this is a little lengthier description, but what you
12 have written for that is "slough in ditch between
13 emergency dredge cell and ash pond (2 to 8 feet wide by
14 20 foot long by 2 to 8 feet deep)."

15 A. Actually 2 to 8 inches deep.

16 Q. I just see one apostrophe there.

17 A. If you look at Exhibit 189, the description
18 contained on the sheet in bates stamp 69918, it
19 indicates 2 to 8 inches deep.

20 Q. What are you referring to?

21 A. Plaintiff's Trial Exhibit 0189.

22 Q. 2 to 8 feet wide by 20 feet long by 2 to 8
23 inches deep?

24 A. Yes.

25 Q. Okay. So you are in agreement with me on

1 that. That is what you wrote. 2 to 8 feet wide by 20
2 feet long by 2 to 8 inches deep, correct?

3 A. Correct.

4 Q. If you can just add that parenthetical to your
5 notes.

6 Once you have that, let's plot waypoint 26 or
7 circle that. Mark it with a 26 and then the descriptor
8 in 189 which you wrote was "slough."

9 THE COURT: Are you going to ask him to
10 confirm what he has written or ask him questions?

11 MR. BYRNE: I was going to ask a few
12 questions, but I was going to present it on the Elmo.

13 THE COURT: Why don't we do that and then
14 we'll see if you need it back.

15 A. Okay.

16 Q. Mr. Dotson, waypoints 22, 23, 24, and 26, all
17 of those waypoints are from the North Dike, correct?

18 A. Would it be possible for you to shift the
19 exhibit over to screen left.

20 Q. There?

21 A. Yes, thank you. It appears all of those are
22 located on the northern dike of the dredge cell.

23 Q. To the left of 22 there is another circled
24 waypoint with an arrow running to it, but it is
25 unlabeled. Do you happen to know what waypoint that

1 represents, as shown on 189?

2 A. Would it be possible for me to mark on my
3 exhibit? The reason I am asking is I mentioned
4 previously the row numbers that are shown on the sheet
5 of the exhibit I am looking at. In addition to I
6 excluded one of the waypoints I would like to transcribe
7 over so I am sure I am looking at the right waypoint.

8 Q. Are you saying you want Exhibit 192 back so
9 you can fill in the other waypoints?

10 A. Would it be possible to mark on Plaintiff's
11 Trial Exhibit 189 baste stamp 691998 because there are a
12 couple of things compounding me from quickly being able
13 to determine which row number corresponds on the
14 appropriate waypoint number because there was a shift in
15 one, and I excluded waypoint 27 because it was a
16 duplicate of 28.

17 THE COURT: Why don't we do this. Let's
18 take our lunch break and then, Mr. Byrne, why don't you
19 along with Mr. Marquand spend a few minutes with the
20 witness and perhaps you all can -- Mr. Marquand, why
21 don't you assist. Let's see if you can get the witness
22 to label the way you want it labeled and if he wants an
23 extra copy, he can do that the same time over the lunch
24 break. Then we'll come back and get into the
25 questioning. We'll recess until 1:30.

1 The Court has some criminal matters to
2 take up. I will use another courtroom next door again.
3 If I am a little bit late, that's why. We'll plan to
4 start at 1:30. Thank you.

5 (Off the record.)

6 (Back on the record.)

7 BY MR. BYRNE:

8 Q. Mr. Dotson, just before the lunch break we
9 were discussing the schematic on Plaintiff's Exhibit
10 192A. Do you have that testimony in mind?

11 A. Yes, I have 192 and 189 Alpha. I don't have a
12 192 Alpha.

13 Q. All right. We have 192A up on the Elmo here.
14 I believe we have marked nearly all of the pertinent
15 waypoints from trial Exhibit 189. Would you agree with
16 that?

17 A. It appears there are a few that are left
18 unmarked. Would it be possible to shift it to screen
19 left.

20 Q. Yes, I apologize. This arrow right here leads
21 to what waypoint?

22 A. That is waypoint number 28.

23 Q. Okay. I will give you back the original so
24 you can make that marking for 28.

25 A. Would you like me to make any additional

1 notations?

2 Q. Yes, you can. That is 192A?

3 A. Would you like me to write the entire
4 description or just waypoint 28?

5 Q. You said that was 28?

6 A. Yes, 28.

7 Q. I think that would be helpful if you can write
8 "Dredge Cell Phase 1 and 2 interface by emergency dredge
9 cell."

10 A. That is actually the interface by Swan Pond
11 Road. Waypoint --

12 Q. So this where I am pointing right here, that
13 arrow points to waypoint 27 or did I get my numbering
14 wrong?

15 A. I think your numbering is wrong. If you look
16 at 189 Alpha.

17 Q. 189A?

18 A. Yes, the sheet ending in bates stamp 918.

19 That is the exhibit I marked on prior to lunch.

20 Waypoint 28 is the Dredge Cell Phase 1 and 2 interface
21 by Swan Pond Road.

22 Q. I see. Then if you would mark this waypoint
23 for us. I think that may be the last one that is
24 unmarked.

25 A. There are actually two that are remaining to

1 be marked.

2 Q. All right. If you can identify both of those
3 for us, that would be great. What is the first numbered
4 one? Which is this?

5 A. That's waypoint number 21.

6 Q. Where I am pointing here?

7 A. That is correct.

8 Q. That's 21? Okay. I think the label for that
9 from your waypoint notes would be "KGL-21."

10 A. That is correct.

11 Q. Once you have waypoint 21 plotted, I think you
12 said there was one more unmarked waypoint from the
13 October 2008 inspection. If you can just orient my
14 finger to where it is in relation to where I am pointing
15 now.

16 THE COURT: Down and to the right.

17 Q. Here?

18 A. If you will go up and to the left. There.

19 Q. There we go. What number waypoint is that?

20 A. That is waypoint number 29.

21 Q. Okay. "Dredge cell Phase 1 and 2 interface by
22 emergency dredge cell"?

23 A. Correct.

24 MR. BYRNE: Madam clerk, if I can get that
25 back from the witness, I will put it up here and we can

1 display the final marked --

2 Here we have what appears to be your
3 marked copy of Exhibit 192A. Does this fairly and
4 accurately depict all of the waypoints and waypoint
5 descriptions that are identified in Plaintiff's Exhibit
6 189 and 189A?

7 A. Yes, it does. Well, it does for the waypoints
8 that were taken for the Kingston Fossil Plant. It
9 doesn't depict the waypoints for Widow's Creek or John
10 Sevier.

11 Q. Correct. That would be the waypoints above
12 waypoint 20, right?

13 A. Yes. The waypoint number 31.

14 Q. Okay. This area that I am pointing to here,
15 just help me get oriented. This is the North Dike,
16 correct?

17 A. That's correct.

18 Q. West Dike?

19 A. That's correct.

20 Q. Cell 2 -- excuse me, Cell 3?

21 A. No, that is actually, if you look in the
22 center of the cell that you were just pointing out near
23 the interface with Cell 1 is marked Dredge Cell 3 it
24 appears. That is an old marking. This schematic that
25 we're looking at actually shows two cells. Formerly

1 before we reached this elevation Dredge Cell 1 was on
2 the south, Dredge Cell 3 was in the center and Dredge
3 Cell 2 was to the north. For some reason the markings
4 Dredge Cell 3 still carries over on this figure.
5 Actually the cell to the north is Dredge Cell 2.

6 Q. Okay. This is Dredge Cell 2 this area right
7 in here?

8 A. Correct.

9 Q. 3, 1?

10 A. Well, with the dike configuration that is
11 currently shown and the elevation that this currently
12 represents, there is a single Dredge Cell 2 to the north
13 and a single Dredge Cell 1 to the south.

14 Q. There used to be a divider dike between 2 and
15 3, is that right?

16 A. That is correct.

17 Q. And then just over time with more and more ash
18 stacking it was covered up and it is no longer there, I
19 guess?

20 A. That's correct.

21 Q. It is there, but not at the full elevation of
22 the stack?

23 A. That's correct.

24 Q. Take a look, if you would, at what has been
25 previously identified as Defendant's Exhibit number 34.

1 Do you have that in front of you, sir?

2 A. Yes, I do.

3 Q. Defendant's Exhibit Number 34 appears to be a
4 full set of the photographs that were taken during the
5 October 20, 2008 inspection. Does that appear to be
6 what this compilation exhibit is?

7 A. It does appear to be. I couldn't verify that
8 all of the photos are in here without taking an
9 inventory of every sheet. I does appear to contain all
10 of the pictures that we took.

11 Q. Just in flipping through it would you agree
12 with me that some of these pictures are pictures that
13 you took and some were taken by Mr. Albright and Buttram
14 with a second camera?

15 A. Yes, that is true. The pictures that have a
16 time stamp in the lower right-hand corner were taken by
17 me. The photos that do not have a time stamp were
18 either taken by John Albright or Chris Buttram.

19 Q. All the photographs fairly and accurately
20 depict the condition of the dike as it appeared or at
21 least those portions of the dike shown in the photos as
22 they appeared during the inspection dated October 20,
23 2008, correct?

24 A. Yes, they are an accurate representation of
25 areas contained in each photograph.

1 MR. BYRNE: Your Honor, at this time we
2 offer Defendant's Exhibit Number 34 in its entirety.

3 MR. MARQUAND: No objection, Your Honor.

4 THE COURT: So admitted.

5 BY MR. BYRNE:

6 Q. Turning back to the Elmo for just a moment, in
7 particular waypoint number 22, the slough road washout,
8 during the course of the October 20, 2008, inspection
9 did you take a photograph or a series of photographs of
10 that waypoint 22 area?

11 A. I took multiple photographs of this area both
12 looking up and down slope and must likely laterally to
13 either side.

14 Q. Okay. Turn if you would, now, in Defendant's
15 Exhibit Number 34 to bates page 277812. That is
16 TVK-000277812. Now, is the photograph that is bates
17 stamped TVK-277812, is that a photograph of the area
18 marked as waypoint 22 on Exhibit 198A?

19 A. Yes, it is.

20 Q. And which side of the North Dike slope is this
21 that 812 is taken from?

22 A. Which side of the dike slope?

23 Q. Yes, sir, where are you standing? Are you
24 looking upstream?

25 A. I am looking upstream or upslope.

1 Q. If we can go to the next slide after that,
2 813. Pardon me, before we get past that let me go back
3 to 811, 277811, back two pages. Is that photograph also
4 taken in the general area around waypoint 22?

5 A. Yes, it is.

6 Q. All right. Let's jump over to photograph
7 277839, bates page 277839. Is that a photograph, sir,
8 of the area in and around waypoint 29 or 25 or do you
9 know?

10 A. I do know.

11 Q. Which one is that?

12 A. That is in the area of the waypoint number 25.

13 Q. Okay. Then the next page, 840?

14 A. That is another shot of the same area.

15 Q. Okay. At waypoint 25?

16 A. Correct.

17 Q. Do you have any recollection of taking a photo
18 of the area marked as waypoint 24 in Exhibit 192A?

19 A. Would it be possible for you to show the
20 figure?

21 Q. Yes, I am sorry. Waypoint 24 is marked as
22 this area and is described as "hole in bottom dike." Do
23 you have any photographs within Defendant's Exhibit
24 Number 34 that depict that area or that feature?

25 A. There should be. I recall taking a photo of

1 that area.

2 Q. Take a minute to just go through the
3 photographs. Let me know if you come across it.

4 A. If you will refer to bate stamp 277817, the
5 photograph that is contained at the top the page is one
6 that I took of that area.

7 Q. Let's pull up the top photo at bates 277817,
8 is that the image that involves waypoint 24?

9 A. Yes, I believe it is.

10 Q. Okay. What are you looking down into? Is
11 that -- did you take any measurements of the depth of
12 that hole?

13 A. No, we didn't take any measurements because it
14 wasn't anything of extreme significance. The one reason
15 that I did take a measurement on the previous waypoint
16 that we discussed was because it was of more substance
17 and for estimating purposes I wanted to have a better
18 understanding how much material it would take to make
19 repair. For something the size of the photo shown on
20 the screen currently, that wasn't really of much
21 significance so we didn't take any measurements.

22 Q. If we can go back to the Elmo, the area marked
23 as waypoint 26. Are there any photographs within
24 Defense Exhibit 34 that depict the area in and around
25 waypoint 26?

1 A. Yes, there are.

2 Q. Can you identify those for us.

3 A. If you'll turn to the page that has the bate
4 stamp ending in 863. That is the first of five or six
5 photographs that are depicting that area.

6 Q. Okay. All right. I want to switch back to
7 your regular screen and we'll go to TVK-277863. If I
8 understood you correctly, the next page, 277864, depicts
9 the waypoint 26 slough area as well?

10 A. Yes.

11 Q. And what about 277865?

12 A. That's correct.

13 Q. And then bates range 277860, that photograph?

14 A. Excuse me did you say 867?

15 Q. No, 860, I am sorry. What area is depicted in
16 277860?

17 A. We didn't actually shoot a waypoint on that
18 photograph.

19 Q. Okay. Where is it located though in terms of
20 -- I tell you what we'll do. We have 277860 up. We'll
21 switch back to the Elmo. Can you guide my pen to where
22 that was taken, approximately?

23 A. Go about and inch to the right and about an
24 inch upward. It is in that general vicinity.

25 Q. This general area?

1 A. Yes.

2 Q. Is that on that, this dike -- well, the top of
3 the dike between this dredge cell and Dredge Cell 3?

4 A. It appears that this is on one of the lower
5 dikes in that general vicinity.

6 Q. Okay. Are there any photos depicting the area
7 marked as waypoint 23, "soft spot" that you know of?

8 A. Yes, there are.

9 Q. Where are those? If you can find those for us
10 in Defendant's Exhibit 34, it would be a huge help.

11 A. If you turn to the page that has the bate
12 stamp ending in 816. I believe the photograph on the
13 bottom is of that area.

14 Q. The bottom photo of 816?

15 A. Yes, that's correct.

16 Q. What does the top photo depict?

17 A. That is the same general area. That one is
18 not of very good resolution. I had taken a shot of John
19 and Chris looking at the area prior to walking up to it
20 and getting a closeup.

21 MR. BYRNE: Your Honor, can I have just a
22 moment to confer with co-counsel?

23 Q. Okay, I think we are through with 192A for
24 now.

25 THE COURT: Have we moved that into

1 evidence?

2 MR. BYRNE: The defendant we would offer
3 192A and 189A at this time.

4 THE COURT: So admitted, 192A and 189A at
5 this time, so admitted.

6 (Exhibit Nos. 189A, 192A were
7 received in evidence.)

8 BY MR. BYRNE:

9 Q. Going back to the top of 189A or the first
10 page you forwarded your waypoint information to
11 Mr. Albright and Mr. Buttram and then they made whatever
12 use they made of it for purposes of preparing their
13 report, is that correct?

14 A. That is correct.

15 Q. Let's go to Plaintiff's Trial Exhibit 196.

16 A. I am ready.

17 Q. On the first page of 196 it appears to be an
18 e-mail from Bill Walton to Chris Buttram, to you, to
19 John Albright and to Mark Hastings and it appears that
20 Barry Snider and a person named Castro and a person
21 named Bill Butler were copied on this as well. Do you
22 see that?

23 A. I do.

24 Q. The subject line of Mr. Walton's e-mail is
25 October 2008 inspection.

1 A. Yes.

2 Q. Who is Bill Walton?

3 A. Bill Walton at this point in time worked for
4 AECOM. He currently works for GEI Consultants. Bill is
5 the person who is the lead geotechnical engineer
6 responsible for the root cause analysis for the release
7 that took place in 2008.

8 Q. You understand that he is a designated expert
9 for TVA in this case?

10 A. That's true.

11 Q. Who is Mark Hastings?

12 A. I don't recall who Mark Hastings is.

13 Q. Is he a TVA employee?

14 A. I don't recall. I recognize the name, but I
15 don't recall who he is.

16 Q. I do too. Is he an attorney for TVA?

17 A. I am not certain.

18 Q. Who is Bill Butler?

19 A. Bill Butler is also currently with GEI,
20 formerly with AECOM. He was one of the geotechnical
21 engineers that assisted Bill Walton with the root cause
22 analysis.

23 Q. When did Bill Walton and AECOM produce their
24 first Root Cause Analysis Report, do you know?

25 A. I don't recall a date. It would have been

1 sometime I imagine a review of a draft took place in
2 sometime in 2009, mid to late year.

3 Q. Okay. Sometime around this June 20, 2009,
4 timeframe when this e-mail came out?

5 A. I would imagine it was quite a bit later than
6 that.

7 Q. Maybe August or September?

8 A. That's reasonable to assume.

9 MR. BYRNE: I think this has been
10 admitted. To the extent it hasn't been, we'll admit it
11 at this time.

12 THE COURT: 196 is in.

13 BY MR. BYRNE:

14 Q. Mr. Walton asked the question, he starts with
15 "Hi guys I need your help, TDEC stability committee
16 reviewers claim that there was observable subsidence on
17 dike slopes on elevated dredge cell area, as reported in
18 the October 20, 2008, inspection at Kingston. We know
19 there were erosion gullies on the north slope of Cell 2
20 below Dike A and erosion on east dike slopes of the
21 Phase 1 dredge cell. Furthermore, there was nominal toe
22 seepage at toe of Swan Pond Road, and seepage sitting on
23 benches of east facing dikes of the Phase 1 cell."

24 Then he asked the question here, it says,
25 "Again, we did not see from your photos and inspection

1 report that there was visible or spoken evidence of
2 slides, sluffs or subsidence. Please confirm this ASAP.
3 Thank you, Bill." Did I read that correctly?

4 A. It appeared that you did, yes.

5 Q. Turn, if you would, to the second page of
6 Exhibit 196, which appears to be a June 22, 2009, e-mail
7 from you to Mr. Buttram and Mr. Albright with a copy to
8 Barry Snider reading, "Did anyone respond to Bill's
9 e-mail?" Do you see that?

10 A. Yes, I do.

11 Q. You wanted to be sure, did you not, that
12 someone answered Mr. Walton's question about whether
13 there was evidence of slides, sloughs or subsidence
14 during the October 20, 2008 inspection, right?

15 A. Yes. I wanted to make sure that someone
16 addressed Bill's question.

17 Q. We turn to the next page and we see a reply
18 from Chris Buttram approximately 90 minutes later after
19 your e-mail that we just looked at and he says, "I just
20 spoke with Bill on the phone and we have discussed his
21 e-mail." Did I read that correctly?

22 A. Yes, you did.

23 Q. All right. Let's turn the page. We see Chris
24 Buttram e-mailing Bill Walton also on June 22nd and he
25 says, "Bill, per our conversation this morning, I can

1 confirm your statements below. Also, please see the
2 attached e-mail detailing our response to TDEC's
3 question and the picture TDEC was referring to. If you
4 have any more questions, please let me know." Did I
5 read that correctly?

6 A. Yes, you did.

7 Q. Now, had you responded -- well, strike that.
8 Mr. Buttram's response to Mr. Walton didn't mention the
9 sloughs that you observed and that you noted in your
10 waypoints during the inspection, did it?

11 A. If you will notice on the page that has the
12 date stamp 13939 I believe it is, in the body of Bill's
13 original e-mail he spells sloughs, s-l-u-f-f. I spelled
14 it s-l-o-u-g-h. At the time of performing the
15 inspection I had marked areas that had eroded and that
16 the sides of the erosion ditch, if you will, had
17 sloughed inward. I had called that an area that was
18 sloughing.

19 After the failure had occurred and we became
20 exposed to other people who used similar terminologies
21 meaning different things, I realized that what I was
22 calling a slough on my waypoints wasn't something that
23 was more widely accepted in the geotechnical world as a
24 slough. Based on my current understanding of what a
25 slough is, the photos that we just went through and the

1 waypoints that I took during the October, 2008
2 inspections did not reflect any areas that were truly
3 sloughing. They were of areas that had erosion issues.
4 After the erosion started and continued to progress the
5 sides of the bank or the sides of the ditch, if you
6 will, would tend to fall in.

7 Q. None of the North Dike fell in on December 22,
8 2008, right?

9 A. Yes. At some point on December 22nd there was
10 a failure.

11 Q. Am I to understand are you telling this Court
12 that you, a very precise man when it comes to
13 terminology, very precise that when you refer all on the
14 North Dike to "slough," "slough," here is some more
15 sloughing ditch over here, all those references to
16 slough in your waypoints that was just wrong, you got
17 that wrong at the time?

18 A. At the point which I took these I was calling
19 something a slough that I later learned was not a
20 slough. You are correct.

21 Q. That begs the question. I mean, were you just
22 not trained in how to identify sloughs prior to December
23 22, 2008?

24 A. No, not at all. Had I seen an area of
25 subsidence or an area where there was some sort of

1 surficial or veneer failure I would have referred to
2 that as a slough as well. I have since learned that is
3 what is more widely accepted as a slough, not an area of
4 erosion.

5 Q. You don't I think it important for the TVA to
6 have annual dike stability inspectors who know the
7 difference between a slough and something that is not a
8 slough?

9 A. I think that regardless of what I saw or had I
10 seen in the areas of subsidence, they would have been
11 handled accordingly. The area that we showed on I
12 believe it was waypoint number 22 was repaired at some
13 point after the inspection.

14 Q. How do you know that?

15 A. After the inspection I met with the person
16 that was my field supervisor who was managing the
17 facility and gave him a rundown of what we had seen and
18 areas I wanted him to repair. That was one of the
19 areas.

20 Q. Who is this man you are talking about?

21 A. His name is James Settles.

22 Q. You are saying that Mr. Settles took care of
23 all these sloughs?

24 A. Not all of them. I understand that he did
25 repair some, including waypoint 22, to the best of my

1 knowledge. Had I seen an area that was truly what I
2 understand now to be a slough, it would have been
3 handled accordingly.

4 Q. You went out to inspect his work after the
5 fact?

6 A. No, I did not go out to inspect his work after
7 the fact.

8 Q. How do you know he did it?

9 A. As I was saying, I did not go out to inspect
10 his work after the fact. I did visit the site more
11 after the inspection and after the inspection I do
12 recall him telling me that he had repaired some of the
13 areas of erosion we had previously identified.

14 Q. Wouldn't Mr. Settles usually note that kind of
15 repair in this daily safety inspection reports, his
16 daily handling reports?

17 A. I don't know if he would or not. I wouldn't
18 find it unusual if he did make note of that.

19 Q. You think it would be unusual if he did make
20 note of that?

21 A. I think you misunderstood. I don't think it
22 would be unusual. Whether he would usually mark
23 something of that significance I don't know.

24 Q. These type of repairs would take some time,
25 wouldn't they? That wouldn't just be a half hour, 45

1 minute job would it?

2 A. The repair that we are referring to for the
3 washout?

4 Q. For all of them, all these sloughs, soft
5 spots, all that stuff?

6 A. As I am saying, individually these wouldn't
7 take a significant amount of time. I can't recall if
8 James repaired all them or not. I do recall him telling
9 me at some point after the inspection prior to the
10 release that he had made some repairs to some of the
11 areas of erosion that had been pointed out during the
12 inspection.

13 Q. At some point you tried to sit down and
14 summarize Mr. Settle's daily inspection and handling
15 reports, didn't you?

16 A. Yes, I did.

17 Q. You know and you can tell the Court there is
18 no mention of any repairs being made to any of these
19 areas on these daily inspection reports, are there?

20 A. I don't recall seeing any. When I looked at
21 his daily reports, that's not what really I was looking
22 for and attempting to summarize. I was attempting to
23 summarize his accounts of what he had seen on the West
24 Dike where we had the prior failures in 2003 and '06.

25 Q. Okay. When exactly did you learn what a

1 slough really was? If you didn't know what a slough was
2 in October 20, 2008, when did you gain a correct
3 knowledge of what that term meant in the geotechnical
4 field?

5 A. It wasn't that I didn't know what it meant. I
6 was using it for cases that weren't applicable or areas
7 that weren't truly sloughs.

8 Q. You were being too causal about their use in
9 your official TVA documents and reports, weren't you?

10 A. I was using it more generically than it should
11 be used.

12 Q. I hate to keep coming back. You are such a
13 precise man. I am struggling with how such a precise
14 man, so precise with his wording all the time, would put
15 slough down unless he either meant what he said, he saw
16 slough or he wasn't trained well enough to know the
17 difference.

18 A. It's not a matter of lack of training at the
19 time of the inspection. It's the fact that I continue
20 to receive training at this date. At some point after
21 that inspection I became aware that what I referred to
22 as a slough in the waypoint descriptions in the photos I
23 had taken of those areas indeed were not sloughs.

24 Q. How did you learn that? Who told you that?

25 A. I don't recall if it was someone with AECOM,

1 Stantec, Geosyntec. I don't recall.

2 Q. Well, it couldn't have been Mr. Walton because
3 here Mr. Walton is six months after the fact, six months
4 to the day, asking you, not telling you, asking you did
5 you see any evidence of slides, sloughs or subsidence?

6 A. Then he goes on to say, didn't see any in any
7 of your photographs.

8 Q. Well, that's not exactly how he puts it.
9 "Again we did not see from your photos and inspection
10 report that there was visible or spoken evidence of
11 slides, sluffs or subsidence." You see that?

12 A. Yes, I do.

13 Q. Okay. There is no reference to sloughs in
14 Mr. Buttram's report, is there?

15 A. That is because indeed we did not see any
16 sloughs.

17 Q. Right. You did and you wrote them down,
18 didn't you?

19 A. Again you are twisting my words.

20 Q. I am not twisting your words. I am quoting
21 your words, sir. Let's go back to the Elmo again.
22 These are your words here. You have got slough
23 references all around here. You know that is a very
24 specific term for people who inspect dikes and dams.
25 Now you are telling us that sometime after this

1 inspection or sometime after the December 22, 2008, ash
2 release incident you came to understand, learn,
3 appreciate or something that what you thought was a
4 slough really wasn't a slough at all.

5 A. That's correct. I came to understand that I
6 was using the term slough in a more generic term than
7 what it is intended to be used.

8 Q. You don't know exactly how you came to that
9 understanding after the 12-22 ash release?

10 A. At some point the people in my organization
11 were provided some dam safety training from Stantec. In
12 that training I do recall they went through different
13 types of failure mode analysis and showed pictures of
14 progressive failures, things of that nature. It's
15 possible that it came out in that training.

16 Q. And that training was in response to the
17 December 22, 2008, ash release incident, correct?

18 A. Yes, it was.

19 Q. You think in that post 12-22 safety inspection
20 training class that they would have told you after all
21 you all had been through with the December 22, 2008,
22 incident to be less watchful or a little more causal
23 about your slough references or to be less strict with
24 your slough references?

25 A. You have lost me with your --

1 Q. You are not saying that somebody at Stantec
2 trained you after this 12-22 ash release that sloughs
3 like the ones depicted here aren't really sloughs, that
4 you shouldn't note them as sloughs, you just let them go
5 without a passing reference?

6 A. I didn't say that. Slough is not a definitive
7 term. It's not exact. Different people use it
8 different ways. After the fact I found out that I was
9 using it in terms that is not generally accepted as
10 being used.

11 Q. Going back to Plaintiff's Exhibit 196, can you
12 tell me this. Can you tell the Court this. Why didn't
13 you just respond to Mr. Walton and say, Mr. Walton, I
14 have to be honest with you, I did see some sloughs. I
15 wrote it down in my notes, but please take a look see
16 and let's talk about it and you tell me if you really
17 think they are sloughs. Why didn't you do that?

18 A. Because by the time Bill had sent this
19 question I had come to understand that those were not
20 sloughs.

21 Q. Okay. Why didn't you chime in and say, Bill,
22 we didn't see any sloughs. My notes say different, but
23 we didn't see any sloughs?

24 A. If you notice the original date that Bill sent
25 his inquiry and the date I replied to the other members

1 of my TVA team, I didn't feel a need to respond, if one
2 of these guys had already done so. I was asking them,
3 you know, in the past two days have you taken the time
4 or had the opportunity to respond to Bill's question.

5 Q. Do you know what the difference between those
6 other two guys and you are?

7 A. No, I do not.

8 Q. They didn't write up any waypoint notes that
9 said sloughs on it. You did. That is why you had them
10 respond rather than you because you did not want to pass
11 along what you knew to be a lie to a state or
12 governmental agency, correct?

13 A. I disagree. They saw everything that I saw on
14 the date of that inspection. They were privy to every
15 waypoint I took. They saw every area I took photographs
16 of. We discussed each thing. We took the time for all
17 three of us to look at everything that anyone of us
18 found of any significance. It wasn't that I felt like I
19 had to lie to anyone, nor do I feel like I need to lie
20 to you today.

21 Q. What steps, did you take, if any, to correct
22 your entries on Exhibit 189A or did you take any steps
23 to correct that?

24 A. I did not take any steps to resubmit or change
25 the descriptions I had provided to John and Chris.

1 Q. Okay. This conversation you say you had with
2 Mr. Settles, when did that take place, this conversation
3 about repairing things depicted on 192A?

4 A. I don't recall when that conversation took
5 place. I typically visited the site once every week to
6 two weeks. I talked to James sometimes daily on the
7 phone. If James had questions, he would call me. If I
8 had questions, I would call James.

9 Q. Okay. You think that conversation took place
10 sometime between October 20, 2008, and December 22,
11 2008?

12 A. I do think so. James is a very proud man and
13 did a very good job maintaining the facility for me.
14 Anytime he had done something that we recommended be
15 repaired, he wanted us to be aware of that.

16 Q. Well, whatever pride he had taken in keeping
17 the place in good repair it didn't stop you from noting
18 what you noted on the October 20th, 2008, inspection as
19 depicted here. You thought some repairs needed to be
20 made, didn't you?

21 A. Yes. Some repairs were made.

22 Q. But you thought those repairs needed to be
23 made immediately, did you not?

24 A. I never used the word immediately.

25 Q. You did not?

1 A. No, I did not.

2 Q. Would it surprise you to know Mr. Buttram and
3 Mr. Albright at least initially used the phrase or the
4 term "immediately" in terms of how soon these repairs
5 needed to be made?

6 A. No, and when using that word I think they have
7 since learned that saying immediately and meaning
8 immediately are two different things. There are some
9 repairs that need to be made at the next possible
10 convenience or some that can wait until better weather.
11 For example, the areas of erosion that I have previously
12 labeled as sloughs in my waypoints would be an area that
13 I would recommend that someone repair when weather
14 allows. Because of the type of repair that would have
15 to be undertaken to address the issue, you obviously
16 would not want to do something like that when you are
17 expecting rain or had a lot of precipitation because you
18 disturb vegetation and it makes it more difficult to get
19 things reestablished.

20 Q. In the two month period following your October
21 20, 2008, inspection were the two rainiest months
22 historically of the year, correct?

23 A. I take your word for that.

24 Q. November and December are cold rainy months,
25 right?

1 A. As are January and February.

2 Q. I understand that. The dike had already
3 failed by January of '09. That is why I am focusing on
4 January and December.

5 A. You didn't ask that though.

6 Q. You are right. November and December, would
7 those typically be months where you would not make
8 extensive slough erosion subsidence type repairs?

9 A. It would depend on the individual repair, the
10 weather that had been experienced prior to the possible
11 repair date and the forecasted weather after the fact.

12 Q. Isn't it true, Mr. Dotson, that Mr. Settles
13 didn't make any note of making any repairs in this daily
14 inspection handling reports because he was going to wait
15 to make them until the weather got nicer?

16 A. I don't recall seeing any note in his daily
17 inspection reports. I can't say for any certainty it is
18 not listed, but I do recall James telling me that he had
19 indeed repaired some of the erosion issues that had been
20 pointed out on the inspection that took place in October
21 of 2008.

22 Q. Uh-huh. Repairs that you would typically wait
23 until spring to make when it's safer, less wet, less
24 cold?

25 A. You are once again twisting my words. What I

1 said is you would want to make those repairs when the
2 weather was such that you could make a repair and get
3 something in place prior to bad weather coming back.
4 For example, if you were going to make a repair such as
5 that in the fall of the year when grass seeds typically
6 won't germinate, there are man-made products that you
7 can use to provide erosion protection until the grass
8 would be reestablished. It is not that --

9 Q. You wouldn't be able to do that in November or
10 December, right?

11 A. I have not said that. I have said it is
12 weather dependent.

13 Q. Okay.

14 THE COURT: Are you aware of, either you
15 were involved in it or personal knowledge of repairs
16 that were done in the October, following the October
17 report?

18 THE WITNESS: I do recall. James had told
19 me that there was one of the areas of erosion that had
20 been noted that he made repairs on.

21 THE COURT: That was the 22 waypoint, I
22 believe you said.

23 THE WITNESS: I believe it was waypoint
24 22. It could just have been waypoint 26. It was, as I
25 recall, it was one of the areas of erosion on the

1 northern dike.

2 THE COURT: Okay.

3 BY MR. BYRNE:

4 Q. Is I understand it, Mr. Dotson, it was one or
5 the other, 22 or 26?

6 A. As I recall.

7 Q. But not both?

8 A. As I recall, he made repairs to one of those
9 areas.

10 Q. Okay. Everything else, as you understood, he
11 was going to wait until spring to take care of or until
12 a warmer time of the year?

13 A. Until he was able to safely make the repair.

14 Q. Because there is some danger involved in
15 making repairs to areas that have erosion and sloughing,
16 correct, or can be?

17 A. There is inherent danger with any type of work
18 that uses heavy equipment. Do I think any of these
19 repairs would have involved any danger outside of the
20 ordinary? I don't think so. These areas weren't of
21 much significance. It would be fairly easy to place a
22 piece of equipment on the bench and excavate, recompact
23 material into these areas given the proper weather,
24 time.

25 Q. But according to your testimony Mr. Settles

1 felt like one out of these two sloughs that you
2 mentioned, 22 and 26, wasn't something he could repair
3 right away because of safety issues?

4 A. I did not say that. Once again, you are
5 twisting my testimony.

6 Q. I strike that, I withdraw that. We'll stand
7 with your previous answer, if I am recapping it
8 incorrectly. To the best of your knowledge, the repair
9 that he made out of all these was either to 22 or 26?

10 A. I don't think I indicated that he didn't make
11 any other repairs. I recall he said he repaired one of
12 the areas of erosion on the north slope.

13 Q. Okay. You marked other areas of problem areas
14 on the north slope besides that. I am trying to get a
15 handle on how many you think he got knocked out. Did he
16 send you photographs of any of these repairs?

17 A. I don't recall if he did or not.

18 Q. You think he would have told you after the
19 December 22, 2008, ash release if he had some?

20 A. It is neither unlikely nor likely. If had he
21 had pictures, he may have provided those. I don't
22 recall seeing any from James.

23 Q. I don't either. I am saying if you had some,
24 those would be important in your mind, wouldn't they?

25 A. If I had those, they would have been provided

1 during discovery.

2 Q. The fact that they haven't been provided
3 during discovery leads you to believe and allows us to
4 conclude that they don't exist, pictures of the repairs
5 that Mr. Settles may or may not have made?

6 A. If I don't have them, they most likely don't
7 exist. I have testified I don't recall receiving them,
8 but I do recall having a conversation with James where
9 he told me he made repairs on one of the areas of
10 erosion on the northern dike.

11 Q. Okay. All right. Were you ever interviewed
12 by McKenna, Long, McKenna, Long folks?

13 A. Quite honestly, I was interviewed by so many
14 people after the release I don't recall everyone I spoke
15 to. It's likely that I was interviewed by someone from
16 McKenna, Long.

17 Q. The date of this conversation you had with
18 Mr. Settles again was what, or do you know?

19 A. I previously testified that I don't recall the
20 date, but it took place sometime prior to the inspection
21 -- I am sorry, after the inspection, prior to the
22 release.

23 Q. Okay. Because you wanted those repairs to be
24 made immediately?

25 A. Again you are twisting my words. I previously

1 testified I did not use the word immediately. We even
2 went into depth on when I would use immediately and I
3 wouldn't.

4 Q. You knew Mr. Buttram hadn't gotten his report
5 out?

6 A. At what point?

7 Q. December 22, 2008.

8 A. I was aware of that. That wasn't something
9 that was unheard of.

10 Q. Right. So if you felt like Mr. Settles needed
11 to make some of these repairs around here prior to
12 Mr. Buttram even getting his report and recommendations
13 out to the company, wouldn't you say those were repairs
14 that needed to be made immediately?

15 A. No, I would not. What I did was met with
16 James, told him the areas where we had found issues, and
17 said something to the effect of at your convenience when
18 weather allows, when you have some time, you can address
19 these repairs. We debrief each time we finish one of
20 these inspections. That debrief typically takes place
21 with a person from routine handling which was me, then
22 we would either include the plant manager or the PAE
23 from the plant and let them know of any findings. This
24 inspection there were no finding that required immediate
25 attention.

1 What I did do was show James areas and give
2 him descriptions, general ideas for repairs and told him
3 at his leisure, convenience, whatever word you would
4 like to use, that they could make those.

5 Q. The rest you were going to wait until better
6 weather?

7 A. I saw nothing that required immediate
8 attention.

9 Q. So why did you talk to Mr. Settles? Why
10 didn't you just wait for Mr. Buttram's report to come
11 out?

12 A. Why would I? I worked daily with Mr. Settles.

13 Q. You weren't the inspector, sir. Mr. Buttram,
14 you testified to the fact Mr. Buttram is the one who was
15 inspecting, Mr. Albright and he were going to write the
16 report. You were there as an observer taking waypoints.
17 You testified to that, correct?

18 A. I testified I wasn't an active participant and
19 was not responsible for producing the report.

20 Q. But you were not an official inspector on
21 that, right?

22 A. If nonofficial means I was not responsible for
23 producing the final report, I agree with that
24 characterization.

25 Q. Why would you not wait and let Mr. Settles

1 read the final report?

2 A. It's called --

3 Q. If you didn't feel like the repairs were
4 urgent, why did you bypass Mr. Buttram, bypass
5 Mr. Albright and go straight to Mr. Settles and say fix
6 it. Don't wait, fix it now?

7 A. It wasn't that I bypassed anyone, nor did I go
8 up to James and say fix it, fix it now.

9 Q. Did you tell Mr. Buttram and Mr. Albright you
10 had such a conversation with Mr. Settles?

11 A. If I can finish. What I did do was talk to
12 James at some point after the inspection and showed him,
13 told him about some areas that needed to be repaired,
14 repairs that were typical, repairs that were not
15 anything that required an engineering evaluation or
16 recommendation.

17 Q. Like sloughs?

18 A. Like erosion issues.

19 Q. Like sloughs?

20 A. If you would like to go back into my
21 description and reason about it, we can.

22 Q. I would like to use your words, sir. You are
23 very careful to cling to your words. I am asking about
24 sloughs. Did you tell Mr. Settles you wanted him to
25 repair sloughs?

1 A. I told him there were areas that had been
2 found that once he had an opportunity could be repaired.

3 Q. Once he had an opportunity?

4 A. May I continue my answer?

5 Q. Mr. Dotson --

6 THE COURT: Go ahead and finish your
7 answer, then we'll go to the next question.

8 THE WITNESS: At the time that the
9 inspection took place I was using the term slough to
10 represent something that I now understand it does not.
11 Can I say that I did or did not use the term slough when
12 I talked with James, since that is what I characterized
13 it when giving a waypoint description, I probably told
14 him that there are some areas of sloughing on the
15 northern dike and on the eastern dike. Probably even
16 went into, James, it's nothing of any real significance,
17 it's something that you have repaired before. We don't
18 need an engineering recommendation. If we did, I am a
19 degreed engineer and could provide input.

20 What I would have done is discuss the
21 general repair that should take place, something that
22 was so routine, James had done it before. And that,
23 James, when you get a moment, when you get some time,
24 you can make these repairs.

25 BY MR. BYRNE:

1 Q. Is that your answer?

2 A. Yes, it is.

3 Q. All this talking with Mr. Settles did you tell
4 Mr. Albright and Mr. Buttram at any point that you
5 planned to have that conversation or had that
6 conversation with Mr. Settles prior to December 22,
7 2008?

8 A. More than likely what would have happened is
9 once we saw each of these individuals --

10 Q. I have listened to your answer.

11 THE COURT: Go ahead and ask the question
12 again.

13 BY MR. BYRNE:

14 Q. My question, again, is simply this. Did you
15 tell Mr. Buttram or Mr. Albright that you had talked to
16 Mr. Settles about making repairs to areas identified on
17 192A prior to December 22, 2008, yes or no?

18 A. That is not a yes or no question.

19 Q. You either told them, sir, or you didn't.

20 THE COURT: Do you recall if you told them
21 that?

22 THE WITNESS: Most likely what would have
23 happened --

24 THE COURT: In fairness to that question,
25 first do you recall if you told them or not?

1 THE WITNESS: I do recall telling them
2 that I would have James address these issues. The point
3 I was trying to make is it most likely happened when we
4 saw each of the items, not after the fact picking up the
5 phone and calling John or Chris, but when we were
6 actually there looking at it, this is something I would
7 have James address. I understand you have to include it
8 in your report, but I will ask that James address these
9 items.

10 BY MR. BYRNE:

11 Q. That is convenient, Mr. Dotson. You and I
12 both know there ain't word one, there isn't boo about
13 Mr. Settles making any changes or any repairs to any of
14 these areas on 198A in that 2009 annual inspection
15 report, isn't that true? Not a word about it?

16 A. That is true. In my question -- I questioned
17 why we even issued a report because at the point it was
18 issued it was a moot point. We were issuing a report
19 that showed things that engineering was recommending to
20 be repaired that were no longer even in place.

21 Q. Mr. Dotson, you told the Court you didn't even
22 know what Mr. Settles got to and what he didn't do. Now
23 are you telling the Court that you understand
24 Mr. Settles corrected all these issues and all the
25 issues documented in the 2009 annual report?

1 A. That is not what I said. What I said was once
2 that report was issued, the areas that included waypoint
3 numbers 20, 28, 21, 22, 30, 23, 24 and 26, and
4 potentially even number 29, were no longer in place.

5 Q. Give me that lineup again. You are saying
6 what was repaired prior to December 22, 2008?

7 A. I did not say repaired. What I said was at
8 the time that this report was issued, the majority of
9 the items that we had noted as waypoints and taking
10 photographs of were no longer in existence.

11 Q. Right. They were spread out 25 miles down
12 river, right?

13 A. I am not sure of the distance down river. I
14 realize it was not in place.

15 MR. BYRNE: I think that is all I have at
16 this time. Thank you, Mr. Dotson.

17 THE COURT: Thank you.

18 **CROSS EXAMINATION**

19 BY MR. MARQUAND:

20 Q. Good afternoon, Mr. Dotson.

21 A. Good afternoon.

22 Q. This is going sound a little disjointed, but I
23 want to show you Plaintiff's, this is Plaintiff's
24 Exhibit 192A, is that correct?

25 A. Yes, it is.

1 Q. Counsel on direct referred to this as a
2 schematic. Is this a schematic?

3 A. This is actually a pretty poor quality
4 reproduction of an actual drawing. It is comprised of
5 survey information that was taken and turned into a
6 topographic map of sorts.

7 Q. Are these areas along the dike, is that
8 shading?

9 A. No, that is not shading. If you actually were
10 able to open the native file and zoom in, you would see
11 these are contour lines that represent varying
12 elevations.

13 Q. What do you mean native file?

14 A. This is actually a copy or a printout of an
15 AutoCAD drawing so if one had a license and the AutoCAD
16 software, you could open up the AutoCAD file and zoom in
17 and see the particular things located on this drawing
18 that appear to be shading on this, but are indeed
19 contour lines.

20 Q. This was produced from a computerized CAD
21 drawing, is that what you are saying?

22 A. Yes, it was.

23 Q. How is it that you were able to locate for us
24 today the location of these waypoints so readily?

25 A. One of the things that we did was take the

1 waypoints and plot the X and Y or the northing and
2 easting of each point. Once you do that in AutoCAD, a
3 marker is placed in each of the areas. Having seen the
4 AutoCAD drawing, I am familiar with where each of these
5 actually fell on the drawing itself.

6 Q. For example, in this area where you have WP-30
7 there is a little mark in black and white that looks
8 like a little bullseye that says original discharge
9 structure?

10 A. That is what Chris used, when he made the
11 waypoints. If this were a better quality, you would be
12 able to see the same marker and number and appropriate
13 description for each of the waypoints.

14 Q. So this, the bullseye and the 30, original
15 discharge structure is something that Mr. Buttram put on
16 there, as a result of the plotting the waypoint?

17 A. Yes, what Chris did is took each waypoint and
18 plotted it. The symbol he used was the cross hairs
19 looking symbol and he would have inserted a text box
20 beside each of these that contained a description.

21 Q. As another example, and I am not sure you can
22 see it, but I think I can see it on the Elmo here.
23 There is another bullseye with a text box there?

24 A. Yes, you can make out the bullseye. A large
25 majority of the text is legible. The first portion on

1 the top line should read "dredge," but unfortunately you
2 can't read it there. You can read "Cell Phase 1 and 2
3 interface Pond Road."

4 Q. All this was on the computerized CAD drawing
5 that Mr. Buttram input the waypoint data to?

6 A. Yes, it was.

7 Q. Have you had an opportunity to review that CAD
8 drawing?

9 A. Yes, I have.

10 (Exhibit No. D-193A was marked for
11 identification.)

12 Q. I have handed you an exhibit marked
13 Defendant's Exhibit 193A. I am going to ask you if you
14 can go through and identify for us what this first page
15 is?

16 A. It is a little hard to see on the screen, but
17 if you have the printout of the exhibit --

18 Q. You have the printout, right?

19 A. Yes, I can read the printout readily. For
20 anyone looking at the screen, they may have difficulty.

21 MR. BYRNE: Your Honor, if I may interpose
22 an objection. I am not sure we have a problem with the
23 witness referring to Defendant's Exhibit 193A. I would
24 like to give TVA's counsel acknowledgment this document
25 was never ever produced in discovery despite repeated

1 requests for colorized photographs, best quality
2 photographs available of all drawings related to the
3 dike impoundment.

4 MR. MARQUAND: Any specific document they
5 asked us for a better quality of, we gave it to them.

6 MR. BYRNE: If we knew about it, Your
7 Honor.

8 MR. MARQUAND: This is a blowup of
9 Plaintiff's Exhibit 192A. I know it is hard to read on
10 the Elmo.

11 THE COURT: Let's go ahead for the time
12 being. We'll take this up later, if we need to. Go
13 ahead.

14 BY MR. MARQUAND:

15 Q. Can you tell us what the first page of
16 defendant's 192A is, please?

17 A. This is a screenshot I took from my laptop
18 where I actually had the native file open. It shows the
19 waypoint number 21 and the description, KGL 21. It
20 shows waypoints 22, 23, 24, and 30 as well as the
21 descriptions that are associated with those.

22 Q. And how were those waypoints put on this
23 particular drawing?

24 A. You go into the software and choose the box or
25 the command to put in a point and then you put in the

1 coordinates, the northing and easting for the point, hit
2 enter and then AutoCAD generates a rendering of the
3 point on the drawing.

4 Q. Let me ask you to look at the second page of
5 Defendant's 193A. What does that particular page show?

6 A. It is similar to the first page with the
7 exception that it has excluded waypoints 21 and 30, but
8 has included waypoint 26.

9 Q. It is a different area of the dredge cell,
10 right?

11 A. Yes, basically what has happened here is the
12 screen has shifted to the southeast.

13 Q. Okay. And Page 3.

14 A. It is the same type of exhibit. With this one
15 we actually shifted more to the south southwest to
16 include the location of the other waypoints that we
17 took.

18 Q. And on these first three pages is there
19 anything that would indicate to your mind that your
20 identification of the waypoints on Plaintiff's 192A was
21 inaccurate?

22 A. No. It looks like I was able to correctly
23 locate all those, despite the poor quality of the
24 exhibit.

25 Q. Now, we look at the fourth page of defendant's

1 193A. What is that?

2 A. It's a similar screenshot, but includes
3 waypoint number 25 that was on the eastern edge of the
4 lateral dredge cell or lateral expansion to the dredge
5 cell and the main ash pond.

6 Q. Now we come to the point of this exhibit. The
7 fifth page shows what?

8 A. The fifth page actually is a screenshot of
9 where I have zoomed in on the drawing.

10 Q. Zoomed in even further?

11 A. Yes, zoomed in even closer so you can actually
12 see the contour lines. You can see the line that is
13 highlighted in blue. When an engineer or technician
14 would hover their cursor from their mouse over one of
15 these blue dots, it would give the parameters that are
16 associated with that point, be it the northing, the
17 easting and the elevation.

18 Q. And on that what we are looking at? What is
19 that at that point there?

20 A. I can't tell the elevation on this point.

21 Q. What is it? For those of you looking at the
22 Elmo we can't really read what is there. What does the
23 exhibit say at that point?

24 A. Waypoint number 23, "soft spot."

25 Q. Does it show a contour line there?

1 A. I does. It's a shot of a contour line that
2 has been selected and that contour line is highlighted
3 in blue and it appears that waypoint number 23 is on or
4 very near that contour line.

5 Q. The next page looks like it's zoomed in even
6 further, is that right?

7 A. That is correct. That is the same point where
8 I have just zoomed in a bit closer.

9 Q. Again, we see -- is this the same thing?

10 A. Yes, it is. The only real difference on this
11 one is that we changed the line weight that is
12 associated with that contour line to make it more bold
13 so it would stick out and be noticed easier.

14 Q. Did you determine the elevation of that
15 contour line?

16 A. Yes I did.

17 Q. How did you do that?

18 A. As I said a moment ago, if I take the cursor
19 that is shown on the screen and hover above one of these
20 blue dots in the lower left-hand portion of the screen
21 that is open, when you are using the software, it gives
22 you the X, Y and Z or the northing, easting and
23 elevation of that point.

24 Q. What is the elevation of this waypoint 23?

25 A. Unfortunately this exhibit does not show the

1 elevation. The screenshot has cropped out that portion
2 of the monitor. From memory I think this was around
3 elevation 773.

4 Q. Okay.

5 MR. MARQUAND: Your Honor, we tender
6 Defendant's Exhibit 193A.

7 MR. BYRNE: Your Honor, I understand the
8 witness' testimony 193A is just a prettier version of
9 the 192A. That's the only difference. If the witness
10 is saying there is some difference beyond that, or what
11 he plotted on 192 is inaccurate, we definitely object.
12 This was never produced to us, didn't appear on their
13 trial exhibit list.

14 THE COURT: What about that Mr. Dotson?
15 Is 193A, what you are talking about with the TVA
16 attorney, does it have the same or identical information
17 that you wrote out on 192A?

18 THE WITNESS: It does appear to, yes.

19 THE COURT: Is there anything in addition
20 to that?

21 THE WITNESS: No, there is not.

22 MR. MARQUAND: I do believe, Your Honor,
23 it does show he was able to elicit the contour this soft
24 spot appeared at which means he can tell us what
25 elevation it appeared at by looking at this CAD drawing

1 that had the GPS coordinates input into it.

2 THE COURT: I will admit 193A. I am a
3 little perplexed why this document was not either
4 produced as part of the litigation or identified as a
5 trial exhibit by TVA. Based on the witness'
6 explanation, I am going to introduce the document.

7 Mr. Byrne, I will give you latitude on
8 redirect and also after you look at the document if you
9 notice any differences. I would assume you are going to
10 want this witness to remain under subpoena and certainly
11 I will give plaintiffs latitude to recall this witness,
12 if you need to, after further examination is developed.

13 MR. BYRNE: Thank you, Your Honor.

14 (Exhibit No. D-193A was received
15 in evidence.)

16 BY MR. MARQUAND:

17 Q. I am going to show you a picture, show you
18 Defendant's Exhibit 163. That is the cover page. Then
19 the second page is an aerial photograph taken on
20 December 23, 2008. We heard some discussion or earlier
21 testimony about the lateral dredge cell expansion.

22 (Exhibit No. D-163 was marked for
23 identification.)

24 Q. Could I have the witness show us on the
25 photograph where the lateral dredge cell is, Your Honor?

1 THE COURT: Yes, you want him to walk over
2 there or mark the poster board or --

3 MR. MARQUAND: I think he can do that with
4 the --

5 THE COURT: Is that a laser pointer?
6 Okay, that is fine.

7 THE WITNESS: The lateral expansion is
8 located in this general area with the southern most dike
9 being here, the eastern most dike in this location and
10 the northern most dike that parallels the existing Dike
11 C right there. The western most dike of the lateral
12 expansion is actually the eastern expansion of dredge
13 Cell 2, formerly 3 and maybe a portion of number 1.
14 This area is still in tact today.

15 BY MR. MARQUAND:

16 Q. We heard the discussion about the ash pond.
17 Is that separate from the dredge cell?

18 A. From the lateral expansion to the dredge cell.

19 Q. Is the ash pond part of the dredge cell?

20 A. We refer to it as a complex. The ash pond is
21 actually this area right here where the water is shown.
22 It is adjacent to the dredge cell.

23 Q. Were any of the dikes around the ash pond
24 itself a casualty of the ash release?

25 A. No. None of the dikes associated with the ash

1 pond were casualties. The extent of the casualty dikes,
2 if you will, were in this general area. The dike that
3 runs from southwest to northeast in this general area is
4 what we refer to as Dike D. At the point of which Dike
5 D intercepts Dike C, that was the extent of the damage
6 to the dikes.

7 Q. Did anything happen to the lateral expansion
8 dikes, when the ash release occurred?

9 A. No, there was no damage incurred to any of the
10 dikes that made up the lateral expansion, nor the ash
11 pond or the stilling ponds.

12 Q. If you would pull out Plaintiff's Exhibit 248.

13 A. I have it.

14 Q. There was a discussion there about the levels
15 of the water in two different areas of the disposal
16 complex. Is that correct?

17 A. If you could direct me to a page.

18 Q. Mr. Perry's e-mail.

19 A. I don't readily see that.

20 Q. I may have the wrong exhibit. I am sorry, I
21 have got the wrong exhibit. Plaintiff's Exhibit 254.

22 A. Yes, I see that noted in this exhibit.

23 Q. What two areas is Mr. Catlett referring to as
24 being nearly the same elevation?

25 A. What Mr. Catlett is referring to is the

1 elevation of the ash that is contained in the lateral
2 expansion in relation to the water surface or the water
3 level within the ash pond. He is basically -- I look at
4 this as a progress report, whereas he is saying that we
5 have made progress such that the actual ash material
6 that will ultimately be raised up to the point where we
7 install a drainage layer has been built out such that
8 the ash inside the lateral expansion is now at or near
9 the same elevation as the water within the ash pond.

10 Q. Was he making any sort of declaration about
11 the level of the water in the dredge cells?

12 A. No, I think everybody familiar with the
13 project understood that since the dikes at this point
14 were loosely placed material that it was neither dense
15 nor compact enough to prevent water infiltration. I
16 think everyone understood that the water level in the
17 ash pond would have been equal to the phreatic surface
18 within the material or the ash that had been
19 hydraulically placed or sluiced into the expansion area.

20 Q. And what was the relative level of the dredge
21 cell by comparison to either the ash pond or the lateral
22 expansion?

23 A. The top of the dredge cell, the upper most
24 pack elevation was at anywhere from 818, 819, 820 feet.
25 If you look at the dikes that bordered the ash pond,

1 they were at about 765. The water level within the ash
2 pond itself was somewhere around 760 or 761. The
3 elevation of the material within the lateral expansion
4 would have been around 760 to 761, or roughly 60 feet
5 less than the upper most portion of the dike that
6 enclosed the dredge cell.

7 Q. As they were dredging material for the ash
8 pond into the lateral expansion, did that have any
9 effect on the height of the dredge cell?

10 A. No, it did not.

11 Q. Did it have any effect on the water in the
12 dredge cell?

13 A. No, it did not.

14 Q. I wanted to clarify Plaintiff's Exhibit 255 is
15 the e-mail from Mr. Monsees to you and Melissa
16 Hedgecoth. What particular dikes is he talking about
17 there?

18 A. He is referring to the dikes of the other
19 construction lateral expansion, the horseshoe shaped
20 dikes that encompassed the northern, eastern and
21 southern edges of that planned expansion.

22 Q. And the photographs which are Plaintiff's
23 Exhibit 1758, is that taken on or near any of the dikes
24 of the dredge cell?

25 A. Not on the dredge cell, no. That is photos

1 taken on one of the dikes of the lateral expansion which
2 were on the order of 60 feet less in height from the
3 dikes of the actual dredge cell.

4 Q. At what level of construction were the dikes?

5 A. These dikes were very early level of
6 construction. We hadn't gotten to the point where we
7 were attempting to stabilize these to allow equipment to
8 operate on them. We were still at the phase where we
9 were sluicing material in that is very loosely compacted
10 and just starting the very early stages of even getting
11 a base that the dikes would ultimately be built upon.

12 Q. What else was going to be done to those dikes?

13 A. Ultimately what would have happened once we
14 got to the elevation that was required, the Heavy
15 Equipment Division would have brought in bottom ash
16 material and used that as a bridging lift. Several feet
17 of this material would be pushed out with a low ground
18 pressure bulldozer. You do it progressively. I hate to
19 say trial and error. You push a little bit out at a
20 time until you get a base that starts to become more
21 solid. You continue to work your way around. Once the
22 actual dike -- this area that he is shown standing on I
23 think the term dike applies to that pretty loosely
24 because it is very loosely placed material. It is
25 almost more of a base. I don't want to use the word

1 foundation. It is almost a base that once it's
2 compacted enough, the dike will be built upon that.
3 After the bottom ash has been placed at a thickness
4 sufficient to be able to bridge over this, a biaxial
5 grid, there is a man-made high density polyethylene
6 material would have been brought in and placed over that
7 and more bottom ash or fly ash mixture placed on top of
8 that. The purpose of the grid is to help distribute the
9 load that will be applied on top of the dike.

10 Q. I would like to turn back to your education.
11 What is your education?

12 A. I have a Bachelor's Degree and a Master of
13 Science in Civil Engineering from Tennessee Tech
14 University.

15 Q. When did you receive those degrees?

16 A. I received my Bachelor's Degree in 2001 and my
17 Master's Degree in 2003.

18 Q. How were you employed following your receipt
19 of your Master's Degree?

20 A. Actually I worked prior to receiving my
21 degrees while at Tennessee Tech while working on my
22 Bachelor's Degree as an undergraduate research
23 assistant. While in graduate school I was a research
24 assistant where I taught classes and managed labs and
25 did research. Upon leaving Tennessee Tech once I

1 received my Master's Degree, I was employed by the
2 Tennessee Department of Transportation. I was with TDOT
3 approximately 13 months. During that time frame the
4 first 12 months or so I was in a program that they used
5 to train their newly hired civil engineers. I was
6 exposed to probably nine or ten different divisions or
7 departments within the Department of Transportation. I
8 could see areas where civil engineers were employed and
9 network with other people I would ultimately be working
10 with. While there I was exposed to bridge inspections,
11 construction inspection, monitoring, I worked in the
12 permitting office for a short while, materials and
13 tests, I worked in the surveying group, and the
14 right-of-way organization.

15 Q. You said this was a program to train their
16 engineers?

17 A. Yes, it was.

18 Q. So did you receive formal classroom type
19 training, when you were doing bridge inspection?

20 A. No. We received no formal technical training,
21 but TDOT did provide training for us more on human
22 performance initiatives. As far as technical training,
23 we received on-the-job training where we went out with
24 experienced engineers or technicians and spent time with
25 them seeing how they actually perform their work.

1 Q. Is that how you learned how to do bridge
2 inspections?

3 A. Yes, I did.

4 Q. You said construction inspection. What kind
5 of training did you have with that?

6 A. On-the-job training where we actually go out
7 and actually watch the materials as they are being
8 placed, be it concrete or asphalt. We watch the
9 technicians perform the tests to make sure they are
10 performing the tests the way they are supposed to be
11 performed.

12 Q. What did you do after you left TDOT?

13 A. After I left TDOT, I was employed by TVA.

14 Q. In what capacity?

15 A. I initially hired in as an entry level
16 engineer in the Fossil Power Group, Engineering Design
17 Services, a civil site group. As part of my tenure as
18 an entry level or what TVA refers to as an A level
19 engineer, I went through over 3,000 man hours of
20 technical training within --

21 Q. Formal classroom type training?

22 A. Some was, some wasn't. A lot of the training
23 would involve on-the-job. Those were primarily for
24 inspections. We did receive formal training in that I
25 had to do various designs or perform various designs for

1 different items. I had to perform calculations that
2 your average run of the mill civil engineer would
3 perform at any company. We performed calculations that
4 included hydraulics, hydrology. We performed watershed
5 analysis. I designed roads, I designed structural
6 elements, retaining walls.

7 A large portion was actually on-the-job
8 training where we went out with experienced engineers
9 and technicians and were taught how we actually did the
10 work in the field, not the work in your cube where you
11 are running calculations.

12 Q. How long did you remain in the Fossil Group's
13 Engineering Design organization?

14 A. I was employed there as an A level engineer
15 just under three years then I was employed as a senior
16 engineer. I stayed there just under four years.

17 Q. So up until about 2008?

18 A. Yes.

19 Q. Okay.

20 A. In July of 2008 -- I was hired in September of
21 2004. I left the Engineer Design Services Group in July
22 of 2008.

23 Q. And where did you go to then?

24 A. I transferred to the Coal Combustion
25 Byproducts Organization under Missy Hedgecoth.

1 Q. What was your responsibility there?

2 A. The primary responsibility was to manage the
3 disposal activities at various fossil plants.

4 If you read the job description, it shows it
5 as in depth as going before the Project Approval Board
6 to get capital or O&M funding for different projects.

7 The primary focus of my job was being at the
8 sites and overseeing the contractor, be it an outside
9 contractor or Heavy Equipment Division, overseeing the
10 work they were performing as it relates to the disposing
11 of the byproduct in the various facilities.

12 Q. Any particular facilities you were overseeing?

13 A. Yes. Initially I oversaw disposal at five
14 facilities. The first was Bull Run. Second was
15 Kingston, the next was John Sevier. The fourth was
16 Widow's Creek Fossil Plant in northeast Alabama and the
17 last was the Gallatin Fossil Plant.

18 Q. You say part of your job is to oversee
19 contractors?

20 A. Yes, whether they were outside or inside TVA.

21 Q. What type of contractors inside TVA would you
22 be overseeing?

23 A. As far as internal contractors, I would
24 provide oversight for the Heavy Equipment Division, if
25 they were the contractor of choice to perform the

1 routine handling that involved the byproducts.

2 MR. DAVIS: I would like to interpose an
3 objection. If he is trying to qualify him as an expert
4 witness, he is not listed on TVA's expert witness list.
5 There has been no disclosure whatsoever of Mr. Dotson as
6 and expert on anything.

7 THE COURT: I assume he is here as a fact
8 witness.

9 MR. MARQUAND: He is a fact witness.

10 THE COURT: Go ahead.

11 MR. DAVIS: They have listed several
12 employees as experts, but they didn't list Mr. Dotson.

13 MR. MARQUAND: That's true.

14 THE COURT: Go ahead.

15 BY MR. MARQUAND:

16 Q. You oversaw internal TVA contractors?

17 A. Yes. Very loosely I would provide oversight,
18 for example, the Surveying Group. I would not
19 necessarily manage their work, but I would provide a
20 code and internal charge code for them.

21 Q. Basically they were working for you?

22 A. Yes, they were working for me.

23 Q. The Heavy Equipment Division did what?

24 A. They actually would take care of storage of
25 the byproducts once they left either the end of the

1 pipe, if it was a wet plant or after the byproducts left
2 the silo, if the plant as operated as a dry plant. They
3 would take the byproducts and store them in a dry
4 landfill or they would be stored in wet ponds much as
5 they had were at Kingston.

6 Q. Let's just focus on Kingston for a moment.

7 Mr. Settles, whose organization did he work in?

8 A. Mr. Settles worked for the Heavy Equipment
9 Division.

10 Q. You were responsible for overseeing that
11 contractor and Mr. Settles?

12 A. That's correct.

13 Q. Is that why you would give him directions to
14 fix erosion, if you saw it during the inspection?

15 A. Exactly. That is exactly why I would ask
16 James to fix something.

17 Q. While you were in the Engineering Design
18 Organization did you ever do any inspections of ash
19 disposal facilities?

20 A. Yes, while working in the Engineering Design
21 Services Group I performed on the order of ten ash pond
22 inspections and then even after leaving that group I
23 participated in about five additional inspections as the
24 Byproducts representative.

25 Q. So when you say as the Byproducts

1 representative, why was Byproducts being represented?

2 A. It made good sense to have me there as a
3 Byproducts representative. That way at some point in
4 time when I see a report I know what they are talking
5 about. I don't have to call the engineers and ask. Or
6 even better it allowed me to be proactive in my job in
7 the capacity that such when we would see something and
8 they agree they are going to write it up, I could go
9 ahead and ask my contractor to start taking care of
10 those repairs. Or if we saw something that indeed did
11 require immediate attention, I was there and could call
12 the contractor to redirect their operations, if need be.

13 THE COURT: Let me ask. In December of
14 2007 you participated in the inspection, I believe your
15 testimony was you actually authored that report,
16 correct?

17 THE WITNESS: That is correct. I actually
18 worked for Engineering Design Services in December of
19 2007.

20 THE COURT: It was shortly after that,
21 sometime between then and the October '08 report in
22 which you went to the other group?

23 THE WITNESS: Yes. In July of 2008 I
24 switched to the Coal Combustion Byproducts Group.

25 MR. MARQUAND: You stole my thunder there.

1 I was going to ask you have you ever done an inspection
2 at Kingston before.

3 THE COURT: Think it came out during his
4 direct examination. We talked about the '07.

5 BY MR. MARQUAND:

6 Q. Is that the first inspection you have done at
7 Kingston?

8 A. The first inspection I performed at Kingston
9 was in December of 2007.

10 Q. How often were these inspections done?

11 A. The inspections we are talking about were
12 performed annually. However, the contractors that
13 worked before me performed daily inspections anytime
14 they were operating. If there is even where we had a
15 certain amount of rainfall on a day where they were not
16 operating, the contractor would send someone out to do
17 an erosion or storm water control type inspection.

18 Q. What type of training did you have to learn to
19 do an inspection?

20 A. Most of the training that I had was
21 on-the-job. We went out with experienced engineers.
22 They showed us various features. They would pull out an
23 old report for the facility and go through the
24 chronology or history of what happened. Even on top of
25 that I had my technical background where I had been

1 trained with the calculations that go into designing a
2 feature. On one hand historically I had the technical
3 background and know how to design such a facility. As
4 far as actually performing the inspection, which was
5 more of a surface inspection, the training was all
6 on-the-job.

7 Q. All right. Were you provided with any written
8 procedures or criteria or checklists to do the
9 inspections with?

10 A. No. The only thing that had been provided to
11 me was copies of the previous years annual inspections.

12 Q. Were you aware of any rules or regulations
13 that informed you how inspections should be conducted?

14 A. No, I was not.

15 Q. Did you consider yourself to be qualified to
16 do these annual inspections?

17 A. Yes, I did. I had been trained by engineers
18 who had several years of service with TVA and who looked
19 at, who had looked at and inspected these facilities for
20 years. I felt like I was very well qualified to perform
21 these inspections.

22 Q. What types of things were you looking for in
23 these inspections?

24 A. We typically looked for things that would
25 require maintenance. We looked for areas that might

1 have erosion taking place. If you have an area that is
2 eroding it's indicative maybe your cross slopes along
3 your benches aren't right. Maybe you need to do
4 regrading to redirect the water or address where it is
5 actually coming through and install some sort of
6 drainage pipe.

7 We looked for areas that needed to be mowed.
8 We looked at areas where the vegetation wasn't well
9 establish and attempted to have vegetation that is
10 established. If you have an area that is bare, it's
11 more susceptible to erosion. We primarily did visual
12 inspections of the surfaces to see if there was anything
13 that needed to be done to address any potential issues.

14 Q. Had the inspections at the other facilities
15 involved aspects that had similarities to Kingston?

16 A. Of the plants I had inspected prior to doing
17 Kingston, Kingston was the only plant that had an
18 elevated dredge cell. All the inspections I had
19 performed prior to Kingston had wet handled bottom ash
20 much like Kingston. One of them had a wet only option
21 like Kingston in such that the material was sluiced to a
22 pond. Then there were two other facilities, one of
23 which had the option, the plant could operate in a dry
24 fashion where the ash is conditioned in a silo and
25 hauled to a landfill, if you will, or we also had the

1 option of sluicing it to a pond like Kingston.

2 Q. Had any of the other facilities had
3 containment dikes?

4 A. Yes, all of them had.

5 Q. Did you have to inspect those dikes as well?

6 A. Yes, I did.

7 Q. What is the purpose of the inspection
8 conducted?

9 A. As I understood the purpose, it was to note
10 changes that had taken place from the previous year.
11 The purpose was also to assist providing input to
12 Routine Handling on things that they need to have their
13 contractor maintain, and by Routine Handling -- I am
14 sorry, that's the new name for the organization I
15 previously referred to as Coal Combustion Byproduct. It
16 was so we could have a record of the progression of the
17 build out of the facility.

18 Q. We heard the term earlier in this trial about
19 "legacy problems." Were there problems that you
20 inherited that would continue from year to year?

21 A. There were some recommendations that were made
22 from year to year. I don't necessarily refer to them as
23 legacy problems. They were routine recommendations. If
24 you have trees on the dike and they are less than a
25 certain diameter, it's good to try to remove those.

1 Those can be handled through mowing. All the facilities
2 where I ever worked had what I call issues such that
3 erosion would take place and the contractor would have
4 to come in and maintain those. I have never heard it
5 referred to as a legacy issue. There were some things
6 that just reoccur periodically.

7 Q. In terms of legacy let me ask you to clarify.
8 Did you see problems one year and they didn't get fixed
9 and they would still be there the next year after you
10 noted them in you report?

11 A. No, typically not.

12 Q. How did you go about conducting an inspection?

13 A. The first thing that I would do, when assigned
14 the responsibility of performing an inspection, was to
15 pull the previous year's report and become familiar with
16 what was there. In the event I had never been to that
17 facility or never performed an inspection of the
18 facility, I would find the author of the previous year's
19 report or my principal engineer and spend time with him
20 getting familiar with what had been seen there
21 previously. What areas should I pay attention to?
22 Where should I really focus my inspection? If need be,
23 I would look at additional records for maybe some
24 ongoing projects that were going on there to see what
25 other work might be taking place so I would be aware if

1 I got to a particular point at the facility if I saw an
2 activity going on I wanted to know why and what was
3 taking place.

4 That was pretty much what we did. We would
5 rely on the historical knowledge of our peers and our
6 management as well as the previous year's report.

7 Q. Did your, when you did the inspection did you
8 carry engineering design or construction drawings with
9 you to compare it to what you saw?

10 A. No. The purpose of this inspection wasn't
11 construction verification. We would carry the previous
12 year's report and we would look for areas that needed to
13 be addressed as far as maintenance, erosion, things of
14 that nature. We weren't there to verify construction.

15 Q. Did you conduct borings, drill samples or did
16 you take measurements of water levels?

17 A. No, we measured no water levels. We typically
18 -- not typically, we never carried surveying instruments
19 with us to shoot water levels or take precise shots. We
20 simply walked the area, looked at things and even just
21 within the past year or so prior to the Kingston release
22 we had started carrying handheld GPSs so we could mark a
23 spot of particular interest. Prior to that what we
24 would maybe do is carry pin flags with us so we could
25 poke a florescent colored flag on a wire stake and make

1 a note on it so it could be found later.

2 Q. Did you take any kind of measurements, do any
3 kind of field verification?

4 A. No, no measurements, no field surveys.

5 Q. When you returned to the office, did you do
6 calculations or any sort of in depth engineering
7 analysis?

8 A. No, I would not. I mentioned earlier I might
9 have wanted to calculate the volume on the area eroded
10 between the lateral expansion, what was referred on the
11 drawing as the emergency dredge cell in the ash pond. I
12 took some rough measurements for that so I could
13 calculate a quick volume. As far as any detail
14 calculations, no, that was never the intent.

15 Q. I want to show you the first page of
16 Plaintiff's Exhibit 191. The document is entitled
17 Annual Ash Pond Dike Stability Inspection of 2009.

18 A. Yes.

19 Q. How do you inspect for stability?

20 A. Actually when I was hired into TVA in 2004 and
21 had the opportunity to perform my first inspection I
22 asked why are these called stability inspections because
23 we are not inspecting for stability. When an inspector
24 is out there walking around the perimeter or
25 circumference of these disposal areas, you cannot see

1 what is going on subsurface. I was of the opinion they
2 shouldn't be entitled stability inspection. If anything
3 it should be called a maintenance inspection.

4 MR. BYRNE: Your Honor, I object, unless
5 the witness can identify who it is he is speaking to and
6 making these comments to and who is giving these
7 responses, I think it is all hearsay.

8 THE COURT: Mr. Marquand.

9 MR. MARQUAND: It's not offered for the
10 truth of what he stated. He is expressing his opinion
11 about what this means.

12 THE COURT: Well, we talked about he is
13 here as a fact witness. Why don't you gear him back to
14 his personal knowledge and/or conversation.

15 BY MR. MARQUAND:

16 Q. Can you inspect for stability?

17 A. No.

18 MR. DAVIS: Again, that requires an
19 opinion, Your Honor.

20 THE COURT: Mr. Marquand.

21 MR. MARQUAND: How many lawyers are going
22 to be jumping up?

23 THE COURT: That's the Court's decision,
24 not counsel's. The objection is really the same. Go
25 ahead and ask your question again.

1 MR. MARQUAND: I forgot what it was.

2 BY MR. MARQUAND:

3 Q. Can you inspect for stability?

4 A. Not to my knowledge, no, you cannot.

5 Q. Can you see indicia of matters that might --

6 THE COURT: Again, in response to the
7 initial objection from Mr. Byrne, you probably need to
8 lay a little more foundation for that, him individually.

9 BY MR. MARQUAND:

10 Q. You, Mr. Dotson, when you are out there
11 inspecting in the field, are you looking for indicia of
12 things that might give you indication that you should
13 take a further evaluation?

14 A. We did look at things that might indicate that
15 further evaluations were required.

16 Q. For what purpose?

17 A. Had I seen an area of significant subsidence I
18 won't use the term sloughing, but subsidence, had I seen
19 something like that, I would have reported back and
20 potentially had a geotechnical or drilling firm come out
21 and do some exploratory drilling in the area to try to
22 determine what might be the cause.

23 Q. When you did these inspections and when you
24 learned how to do these inspections, what were you
25 informed that you should do about reporting of issues?

1 A. The standard protocol was to report back.

2 MR. BYRNE: Object, Your Honor. Hearsay.
3 If the witness can give a name behind all these comments
4 he is reporting.

5 THE COURT: I am not sure from the answer
6 I have heard so far whether it is hearsay or not. Why
7 don't you ask a little more detail to establish whether
8 it is or not, Mr. Marquand.

9 BY MR. MARQUAND:

10 Q. Mr. Dotson, do you recall how you learned to
11 do inspections?

12 A. I was trained to do inspections through a
13 compilation of people. The first person would have been
14 my principal engineer, Lynn Petty. Also accompanied
15 senior engineers on inspection. Some of the names of
16 these senior engineers were Sherry McKinney and John
17 Albright.

18 During the course of being trained for these
19 inspections we were told that the standard protocol was
20 to conduct an exit interview of sorts prior to leaving
21 the facility. If you found nothing of significance you
22 called the plant manager or you called the environmental
23 contact at the plant, possibly the shift operations
24 supervisor, you contact someone and let them know, one,
25 that you are leaving the facility. That way if

1 something happens, you are accounted for. Two, to let
2 them know what you did or did not find.

3 Q. When you went on the October, 2008, inspection
4 with Mr. Albright and Mr. Buttram they were conducting
5 on behalf of Engineering Design, correct?

6 A. That is correct.

7 Q. Did they inform anyone of their findings
8 before they left the plant that day?

9 A. I can't speak to that. Prior to their leaving
10 or prior to their completion of inspection I had wrapped
11 up the portion that involved me. There were some
12 facilities at plants that were inspected that didn't
13 involve Coal Combustion Byproducts such as the ponds
14 that handled the stormwater runoff from the coal. I had
15 no involvement with that portion of the inspection.
16 Once we fished inspecting the actual disposal areas I
17 checked out and they finished their inspection.

18 Q. Were you informed by them of any issues that
19 they thought needed to be addressed?

20 A. No, I was not.

21 Q. During the inspection did you observe any
22 leaks or blowout or anything indicative that there might
23 be a dike failure?

24 A. No, I did not.

25 Q. Did you observe a wet spot in the North Dike

1 in December of 2007?

2 A. Yes, in December of 2007 on the northeastern
3 dike in the approximate area of the Monitoring Wells 13,
4 14 and 15 I found an area that was wet. That there was
5 some water and I will use the term "seeping" from the
6 slope. Once I got up to a point where I could locate
7 the HED field supervisor, who was James Settles, I got
8 his attention, possibly called him and asked that he
9 come over to provide some assistance. Once I told him
10 the general area of where I was he reminded me there
11 were some underdrains that actually daylighted or exited
12 the slopes of the dike in that general area.

13 James and I took a shovel and walked down to
14 the area that I found what I thought was a seep. We dug
15 through some grass and loosely blazed soil and actually
16 found the outlet of an underdrain and the underdrain was
17 actually serving its purpose. It was relieving the
18 water from the inside of the facility.

19 Q. Let me show you Plaintiff's Exhibit 188, page
20 6. Is there a reference on that page to the wet spot
21 you located that day?

22 A. Yes. If you look at the second paragraph to
23 the right of the photograph that is labeled figure 9.

24 Q. Would that be it?

25 A. Yes, that is it. I summarize basically what

1 this says. It reads, "An area which is believed to be a
2 seep was located on the northeastern dike of Cell 2.
3 Plant personnel accompanied inspectors to the area to
4 investigate. Upon digging in the area it was determined
5 that the running water was originating from an old
6 underdrain system. The water was clear flowing, but
7 there were signs that it contained red water in the
8 past. The red water standing was due to iron leaching
9 out bottom ash contained in the dredge cell."

10 Q. Is the fact that there was water coming from
11 an underdrain a problem?

12 A. No, that is actually a good sign because it
13 let's you know that, one, that underdrain is working.
14 If one is flowing or if one is not flowing it's not
15 necessarily a bad sign. It's just indicative no water
16 is coming through at the time. It could mean it is
17 stopped up or it could mean there is no water reaching
18 it at that point. C1 flowing made the inspectors feel
19 good because we realized and recognized that the system
20 was performing as designed.

21 Q. When you did the inspection in October of 2008
22 did you find a wet spot in the same general elevation as
23 you did in 2007?

24 A. Yes, we did. We found one that was the same
25 general elevation and the same approximate location.

1 The underdrains were spaced on one to two hundred foot
2 centers. I can't say that it was the exact underdrain
3 that I had located in 2007. It was in the same general
4 vicinity at the same approximate location.

5 Q. I am going to show you Page 7 of Plaintiff's
6 Exhibit 191. You see the last sentence beginning on
7 that page "The small wet spot was noticed" and then it
8 continues to the next page. The toe of the Cell 2 dike.
9 You see that?

10 A. Yes.

11 Q. Is that the photograph that plaintiff's
12 counsel showed you from Defendant's Exhibit 34 which
13 appear as the top of page 277816 and again at the bottom
14 of that page?

15 A. Yes, it was in that general area.

16 Q. And those were immediately down hill from the
17 water?

18 A. The monitoring wells that were numbered 13 and
19 14 and after talking with James he indicated there were
20 underdrains in that general area and he was aware that
21 the area would tend to be wet and that water would tend
22 to flow from the slopes. He kept an eye on those.

23 THE COURT: We have been going a couple of
24 hours. Why don't we take a break until 4:00.

25 (Off the record.)

1 (Back on the record.

2 THE COURT: Mr. Marquand, you may proceed.

3 MR. MARQUAND: Thank you, Your Honor.

4 BY MR. MARQUAND:

5 Q. You were asked about an assignment to track
6 water levels from various points that were measured at
7 Kingston?

8 A. Yes.

9 Q. I want to ask you about that.

10 A. Okay.

11 Q. When were you first, when did you receive that
12 assignment?

13 A. I received the responsibility for tracking the
14 water levels when Chris Hensley left Engineering Design
15 Services at some point in June of 2008. Subsequent to
16 receiving any data for input I had been notified that I
17 had been given another position with the Coal Combustion
18 Byproducts Group and I would be leaving Engineering
19 Design Service.

20 The manager at time sent an e-mail to Matt
21 Williams in response to Matt's question, "who do I send
22 the information to?" Barry told Matt to continue to
23 send it to both myself and to Barry and that we would
24 perform a handoff to Chris Buttram so Chris would be
25 ultimately responsible for putting in the data upon my

1 release to the Coal Combustion Byproducts Organization.

2 Q. Let me show you three documents and ask you if
3 they go together. First, Plaintiff's Exhibit 241 and it
4 is an e-mail chain. The top e-mail is August 1, 2008,
5 e-mail from Barry Kimsey to Mr. Buttram with a cc to
6 you. What was that all about?

7 A. If you look at the e-mail at the bottom of the
8 page, I had sent something to Chris asking to be
9 notified prior to one of the piezometer's peaking in the
10 red. There were various levels of indication of what
11 part of the roles and responsibilities were when Chris
12 input data and saw that it was in the red that he was to
13 notify me. I had just asked that he provide
14 notification prior to that. Barry is looking
15 undoubtedly from his response from the upper e-mail. It
16 is out of focus now --

17 Q. You mentioned the terms "roles and
18 responsibilities."

19 A. Yes.

20 Q. Did that have anything to do with this
21 particular e-mail?

22 A. That is what it looks like is that Barry was
23 clarifying that the EDS role -- he has him listed as
24 tech support not CS&E which was the Components and
25 Systems Engineering Group that worked in EDS.

1 Q. In your e-mail at the bottom, the August 1
2 e-mail from you, you indicate, "I made a name change
3 (see attached in the highlighted area)." Do you see
4 that?

5 A. Yes.

6 Q. Let me show you this document, which is
7 Plaintiff's Exhibit 186. Can you tell us what that is?

8 A. This is a document that was put in place for
9 the groundwater monitoring system that contained the
10 basic background information of how we had gotten to
11 where we were. It outlined the roles and
12 responsibilities for the various organizations who were
13 responsible for either reading the piezometers and well
14 points and dewatering well points and Fossil Support or
15 Tech Support who was responsible for taking the data
16 obtained in the field and actually putting it into the
17 spreadsheet, giving it to Byproducts Disposal who was
18 responsible for reviewing the results. And then from
19 Fossil Group or Engineering Design Services or Tech
20 Support. Once we were notified, if we ever were, that
21 one of the piezometers had reached a threshold or a
22 trigger point, we were to make a modifications operation
23 to attempt to address the elevated --

24 Q. There is areas that look like they were
25 highlighted.

1 A. Yes.

2 Q. You see those?

3 A. Yes.

4 Q. Are those the roles and responsibilities
5 section of that document?

6 A. That is correct.

7 Q. Does this document have any relationship to
8 the previous document, Plaintiff's Exhibit 241, that we
9 just saw between you, Mr. Kimsey and Mr. Buttram?

10 A. It appears that the e-mail that we had just
11 discussed was in relation to this document.

12 Q. And there is a reference to tech support in
13 this particular document, right?

14 A. Yes.

15 Q. Let's go back to Plaintiff's Exhibit 241. Do
16 you see where Mr. Kimsey says "I added EDS after tech
17 support to clarify it was us and not somebody else."

18 A. Yes.

19 Q. Let me show you Plaintiff's Exhibit 1552 which
20 also has a section on roles and responsibilities. Have
21 you ever seen this before?

22 A. Yes, I have.

23 Q. What is it?

24 A. It appears to be another version of the same
25 roles and responsibilities type document that was in

1 place for the groundwater monitoring services.

2 Q. And does it have an addition after tech
3 support to add EDS?

4 A. I don't see an addition to add EDS. I see in
5 the area that is underlined near the blue arrow that it
6 calls out Tech Support Engineering Design Services. As
7 I recall from the previous exhibit, there were only two
8 bullets under EDS. No, I am sorry, there were three.

9 Q. The heading is different there isn't it?

10 A. Yes. Tech Support or Technical Support was
11 the larger parent organization that encompassed
12 Engineering Design Services Components and Systems
13 Engineering and possibly some other organizations I
14 wasn't familiar with.

15 Q. Who is responsible for drafting this roles and
16 responsibilities document?

17 A. I don't recall at this time if I had drafted
18 it or Chris Buttram had.

19 Q. What was, why were the two of you working on
20 it?

21 A. Just to clarify everything to make sure that
22 in the event that a threshold was met or data came in
23 that everyone was clear as to who was to provide what
24 level of support.

25 Q. And Mr. Kimsey's e-mail, which is Plaintiff's

1 Exhibit 241, does he indicate the data should be shared
2 by Engineering Design with somebody else?

3 A. Yes, I'm sorry. It is a little blurry. He
4 asks that we provide the summary of the findings to the
5 Kingston PAE, which is the environmental contact at the
6 plant.

7 Q. Does he also mention putting it on the server?

8 A. Yes, he asks that Chris get with the gentleman
9 named Patrick Johnson and let Patrick provide a link for
10 others so they can actually access the information.

11 Q. When he says "Jamey" he's referring to you,
12 correct?

13 A. That's correct.

14 Q. Now, when you were first assigned this
15 monitoring responsibility, did you study up on it a
16 little bit?

17 A. No. I received, whenever I was first assigned
18 responsibility, opened up the spreadsheet and saw there
19 were several tabs, understood there were two sheets that
20 would be coming to me and there was yet a third sheet I
21 would use for putting the data into. Instead of trying
22 to figure out what went on, I'm the type of person that
23 learned by doing. Instead of having someone explain it
24 to me and then not doing it for some period of time, I
25 asked to wait until I actually received data so I could

1 sit down with somebody and have them walk me through it
2 to make notes I could use in the future to make sure I
3 was accurately transferring the data to the proper
4 locations on the spreadsheet.

5 Q. The rules and responsibilities document that
6 we were looking at, Plaintiff's Exhibit 52, gave some
7 background on the top, is that correct?

8 A. Yes.

9 Q. What was the understanding of the background
10 for this monitoring system?

11 A. I understood that due to the seepage that was
12 found in November of '06 that we had installed
13 drive-point piezometers.

14 Q. We, what to you mean, we?

15 A. TVA had installed drive-point piezometers, I
16 believe there were about 33 in the general area of the
17 remediation, as well as dewatering well points. That
18 the purpose of these were, one, the piezometers were to
19 provide an indication of the water surface for the
20 phreatic surface within the dike and the purpose of the
21 dewatering well points initially was to draw down that
22 water level for construction of the repair from the '06
23 blowout, if you will.

24 Q. When you were given this assignment to track
25 this monitoring system, was that your first involvement

1 with any of the issues going along the dike on the west
2 side of Kingston Ash Facility?

3 A. It wasn't my first involvement. My first
4 involvement was to provide the Phase 3 or the
5 construction support from the Engineering Group for the
6 implementation of some of the features that were
7 designed to help limit water infiltration into the
8 dikes.

9 Q. I don't understand what you are saying. What
10 did you do?

11 A. Basically if you were to cut a cross section
12 of the dike, as it was in 2007, you would have various
13 benches or what would appear to be a road at different
14 levels. One of the problems that we found was that the
15 benches and the ditches associated with those had fairly
16 flat slopes. It's hard to maintain a ditch at a flat
17 slope. One of the problems was that water, particularly
18 rainfall, would pond on these benches. It would just
19 sit there either until it evaporated or infiltrated into
20 the dikes. What we were installing were some surface
21 drainage repairs where we actually went into what I
22 refer to as the roadway or the bench and we installed a
23 heavy plastic material with synthetic layers to protect
24 it. That prevented the water from infiltrating into the
25 bench itself.

1 Q. Did you have any responsibility for these
2 modifications?

3 A. Not for the design. I oversaw the
4 implementation of construction.

5 Q. You were actually out there overseeing the
6 construction?

7 A. Not daily. We had someone who was responsible
8 from a construction manager standpoint. I was the
9 liaison in Engineering Design Services who if the
10 constructor had questions they could come back to me and
11 I would in turn go to the engineer of record with the
12 questions.

13 Q. I show you Plaintiff's Exhibit 59. Using your
14 finger can you show us the area of, the general area of
15 these modifications?

16 A. The modifications started in this corner of
17 the dredge cell -- basically parallels Swan Pond Road
18 along the western dikes up into this. That is the
19 general area where they were located. There was about
20 three different benches where these, this plastic was
21 installed to divert the water to catch basins and the
22 catch basins subsequently diverted the water through
23 buried pipes to the bottom of the slopes to a rip-rap
24 line ditch.

25 Q. I would like to show you Plaintiff's Exhibit

1 812.

2 (Exhibit No. P-812 was marked for
3 identification.)

4 Q. Now, you mentioned drive-point piezometers.
5 What area were they installed in?

6 A. The drive-point piezometers were installed
7 initially in the primary remediation area which was at
8 the --

9 Q. I will let you draw again.

10 A. The primary remediation area was generally at
11 the intersection of Dredge Cell 1 and Cell 3. Then
12 ultimately the drive-point piezometers were also
13 installed from that portion of the cell up to just past
14 where I drew the other line along the same area where
15 the surface drainage repairs were put into place.

16 Q. So southwest to the line at the northwest?

17 A. That would define the limits along the dike.

18 Q. All right. You mentioned drive-point
19 piezometers. Just so we have an idea, let me show you a
20 photograph. Would you look at the photograph on Page 7
21 of Plaintiff's Exhibit 812. I believe it's Plaintiff's
22 Exhibit 812, is that right?

23 MR. MARQUAND: Your Honor, the only copy I
24 have is a color copy, although the Plaintiff's Exhibit
25 is black and white.

1 MR. BYRNE: The black and white is the
2 version that TVA produced to us. I didn't know until
3 now he had a color copy.

4 MR. MARQUAND: The color copy is a
5 prettier picture. I am happy with the black and white.
6 I don't have copies of the black and white one for
7 everyone to look at.

8 THE COURT: You have the black and white
9 one?

10 MR. BYRNE: Yes.

11 THE COURT: Let's proceed.

12 MR. MARQUAND: I have an extra copy, if
13 they would like the color one.

14 THE COURT: Go ahead and proceed.

15 MR. MARQUAND: I apologize. The only copy
16 I have to show the Court is the color copy, although the
17 one in the record is black and white. I don't believe
18 there is any difference other than coloration.

19 THE COURT: That is fine. Go ahead.

20 BY MR. MARQUAND:

21 Q. Showing you Page 7 of Exhibit 812. Can you
22 tell us what a drive-point piezometer is. Specifically
23 when you say drive-point, what do you mean by that?

24 A. If you look at the picture contained on the
25 bottom picture on this slide, you can see the end of the

1 drive-point piezometer is conical shape with a sharp
2 tip. The way these are installed is you take the
3 typical fence post driver much like you were diving a
4 fence post out on your farm, you drive these in the
5 ground to a depth of -- these were installed at three to
6 five feet below grade.

7 Q. If we can envision a fence post being driven,
8 that is basically what these things look like?

9 A. They are not augered in or drilled in like
10 deeper wells or piezometers would be. There's no
11 augering or mechanical drill.

12 MR. BYRNE: If I may interpose an
13 objection. I don't think there has been any showing
14 that Mr. Dotson installed a single one of those. That
15 was Mr. Williams and his crew who did it. Counsel chose
16 not to go into that with him last week, for whatever
17 reason. That is the person who is the expert on what
18 was and wasn't installed, not Mr. Dotson.

19 THE COURT: We are not having experts
20 here. If you can lay a little bit of foundation about
21 this witness' personal knowledge about how these were
22 installed.

23 BY MR. MARQUAND:

24 Q. Mr. Dotson, did someone under you or someone
25 you managed install these?

1 A. At the point where these were installed it was
2 my understanding Geosyntec installed them with the
3 assistance of maybe some of the GUB&K contractors on
4 site. It is not something extremely technical. You
5 just drive them in.

6 Q. In the picture in the upper right corner here
7 what are they doing there?

8 A. Using the fence post driver.

9 THE COURT: Have you personally observed
10 these being installed?

11 THE WITNESS: I have not seen them
12 installed. I have read installation --

13 THE COURT: I will sustain the
14 installation. There are others that can testify to
15 that.

16 BY MR. MARQUAND:

17 Q. The point is, Mr. Dotson, about how long and
18 how deep are these things?

19 A. The piezometers were installed to a depth of
20 about --

21 MR. BYRNE: Objection, Your Honor.

22 THE COURT: I guess the objection is --
23 see if you can establish personal knowledge. If he has
24 seen them or measured them or something.

25 BY MR. MARQUAND:

1 Q. Do you know how deep these are installed?

2 A. I have seen records that indicate they were
3 buried to a depth of three to five feet below grade and
4 that this standpipe, if you will, was one to three feet
5 above grade.

6 Q. Have you been out and seen the standpipes in
7 place?

8 A. I have seen them in place multiple times.

9 Q. I show you Page 17, bottom of Page 17,
10 Defendant's Exhibit -- the bottom of Page 17 on
11 Defendant's Exhibit 34. Is this a photograph that you
12 took on the October 20th, inspection?

13 A. That's one of the photographs I took. That's
14 evident by the time stamp that is contained --

15 Q. If you look carefully, you will see some white
16 stakes and also some flags sticking up.

17 A. Yes, that is correct.

18 Q. What are those?

19 A. The flags that you see are the bicycle flags
20 that were discussed earlier in the day that Matt
21 Williams had his technician install to help delegate the
22 areas where the drive-point piezometers were located.
23 The areas that are white PVC that looks like white
24 sticks sticking out of the ground in this photo to the
25 right of some of the bicycle flags, those are actually

1 the drive-point piezometers.

2 Q. Let me show you TVA Exhibit 194, Defendant's
3 Exhibit 194. Can you tell us what that is?

4 (Exhibit No. D-194 was marked for
5 identification.)

6 A. I think this is a schematic that was prepared
7 by a staff engineer at Geosyntec that is representative
8 of the area of remediation along Swan Pond Road along
9 the western dike of the dredge cell. It is a bit hard
10 to read, but indicates the approximate locations of
11 piezometers and the dewatering well points along this
12 stretch of the dike.

13 Q. Okay. When and how did you learn about this
14 particular schematic?

15 A. I don't recall when I first saw it. Once I
16 was given the task of managing the Phase 3 construction
17 or implementation of the surface drains as well as when
18 I was told that I would be responsible for inputting the
19 data into the spreadsheet that Geosyntec had prepared, I
20 had just found some historical documents that TVA had
21 that my section had and had read through them just to
22 understand a little more of what was going on.

23 Q. You said surface drains. What surface drains
24 are you talking about?

25 A. The surface trains I mentioned a moment ago

1 where we installed the plastic sheeting along the bench
2 of the road to direct the -- to direct the water to
3 catch basins and the catch basins subsequently directed
4 the water down to a discharge ditch and the ditch
5 paralleled Swan Pond Road. The water flowed north,
6 northwest to a collection point which was actually a
7 pumping station. The pumping station pumped the water a
8 short distance into yet another channel. From that
9 channel the water gravity flowed to two culverts into
10 the ash pond.

11 Q. Let me go back to Page 17, Defendant's Exhibit
12 34. You mention the water flowed down a ditch. Is that
13 the ditch?

14 A. Yes, that is the ditch that is seen to the
15 right of the guardrail. You can see three vertical
16 concrete riser structures. Those riser structures are
17 right in the toe, right at the edge of that ditch.

18 Q. And where did the water, which direction did
19 the water flow?

20 A. The water flowed from left to right across the
21 screen.

22 Q. To what?

23 A. To the pump station I mentioned just a moment
24 ago. I can't recall if the pump station is evident in
25 this picture. It looks like this might be the edge of

1 the fencing that was around that pump station. It was
2 simply a retention pond with pumps. Once the water
3 levels inside the pond reached the design elevation, the
4 pumps kicked on and pumped the water over toward the
5 east.

6 Q. Let me show you the bottom photograph on page
7 26, Defendant's 34. Can you tell us what that is?

8 A. This is the retention pond that collected the
9 water and also housed the pump station that pumped the
10 water to the drainage well that then carried it to the
11 ash pond.

12 Q. So the water came from the ditch down the west
13 slope of the dikes down the ditch into this pond?

14 A. That is correct.

15 Q. And then where did it go?

16 A. From there it was pumped -- I realize this
17 aerial photo doesn't show what the --

18 Q. Let me show you this photo right here. This
19 is Plaintiff's 59.

20 A. Thank you. The pump station that we just saw
21 is in this general area.

22 Q. All right.

23 A. The water was pumped from the retention pond
24 to a discharge point somewhere in that general area and
25 from there it flowed down the drainage swale to the two

1 culverts and into the ash pond. I apologize. The way I
2 have drawn the line appears it is up on the slope. It is
3 not. It is actually --

4 Q. There is a swale or ditch along on the outside
5 of the North Dike up here?

6 A. Correct. Correct. From the elevated dikes
7 that made up Dredge Cell 2 which would have been dikes
8 Alpha through Delta, from there over to the main dike
9 which we refer to as Dike C, there was a wide drainage
10 swale that was used to collect storm water plus the
11 water pumped into it from this retention pond.

12 Q. It flows on the surface?

13 A. Yes, surface water ditch.

14 Q. One more point of clarification. We have what
15 is called a Dike C right here. Is that correct?

16 A. That is correct.

17 Q. And what is that?

18 A. Dike C is the original containment dike that
19 was constructed at some point in time to make up the
20 outer perimeter for at that point the dredge cell
21 ultimately or at that point the ash pond, but ultimately
22 the dredge cell complex.

23 Q. Was there a dike inside of Dike C?

24 A. Yes, if you step inboard from Dike C there was
25 a two hundred foot lateral setback and then there was a

1 series of dikes that made up the northern, the whole
2 perimeter of the dredge cells actually. Those were,
3 they were actually called stages; Stage A, Stage B,
4 Stage C1 through C3.

5 Q. That could get confusing if you are talking
6 about Dike C and Stage A, B and C.

7 A. Yes, you have to be really careful when you
8 are referring to the dikes that make up the dredge cell
9 complex that you don't refer to those as Dike C because
10 most of the people would just refer to those as the
11 northern dikes of the dredge cell complex and think that
12 you are referring to the outer most containment that is
13 there to contain all of the material in the dredge cell,
14 as well as the ash pond.

15 Q. Now, we have heard the term -- in addition to
16 piezometers we have also heard the term "well points"?

17 A. Yes.

18 Q. Tell us what a well point is?

19 A. A well point is a piezometer that is installed
20 for potentially multiple purposes. Well points can be
21 used for groundwater compliance where samples are taken
22 periodically and checked for various metals that could
23 potentially leach from coal combustion products. They
24 are also used for an indication of the groundwater
25 surface.

1 Q. Let's talk about in Kingston in the context we
2 heard the term well point.

3 A. Monitoring well.

4 Q. Well point on the West Dike, the west side of
5 the containment facility?

6 A. Well points that were contained along the
7 western side of the dredge cell complex were initially
8 installed to dewater the area, to help lower the
9 phreatic surface within the dikes to facilitate
10 construction. Once the construction was complete we
11 realized that we already had something that we could
12 leave in place and for a fairly inexpensive amount of
13 money convert to something that could continue to
14 dewater on its own once the pumps were removed. What
15 TVA did was cut off the vertical standpipe at some
16 distance below grade and install just a plastic PVC T as
17 much as you would do if you were doing plumbing at home.

18 MR. BYRNE: He is testifying about repairs
19 and things he didn't even carry out. The man is not
20 even a licensed professional engineer. I don't know how
21 counsel can continue to ask him about things he didn't
22 have anything to do with, doesn't have any expertise in.
23 We just object to this whole line of questioning. The
24 man is not even a Licensed Professional Engineer in the
25 state of Tennessee.

1 THE COURT: I understand. What is your
2 response, Mr. Marquand?

3 MR. MARQUAND: I can lay a foundation.

4 THE COURT: Lay a foundation. We are not
5 asking for an expert opinion. He's not an opinion
6 witness.

7 BY MR. MARQUAND:

8 Q. Have you see the well points?

9 A. Yes, I have.

10 Q. Have you seen the drawings?

11 A. Yes, I have.

12 Q. Have you seen them in place?

13 A. Yes, I have.

14 Q. Have you seen them while they were dewatering?

15 A. I have.

16 Q. Let me show you Page 11 of Plaintiff's Exhibit
17 812.

18 A. One thing I might add, those were actually
19 installed when I was performing the role as the
20 responsible engineer for the surface drainage repairs.
21 They were incorporated as under my watch as part of the
22 construction that took place along that slope of the
23 dike.

24 Q. Tell us what this, let's look through these
25 photographs. What are they doing in the photograph in

1 the upper right here?

2 A. The upper right-hand photo shows what appears
3 to be a machine that is installing one of the dewatering
4 well points. As I mentioned previously, those were
5 installed to depth up to about 20 feet. A mechanical
6 machine was installed to install those, as it would have
7 been difficult to install a drive-point.

8 MR. BYRNE: We object. The man didn't
9 install any of these. The testimony is he didn't review
10 the data until December 22, 2008. I don't know how any
11 of this is relevant.

12 MR. MARQUAND: I believe his testimony was
13 he was responsible for providing the managing
14 construction support when this was done.

15 THE COURT: Overrule the objection. You
16 may proceed.

17 Q. What is the photograph to the left-hand side?

18 A. That is a header system that was put in place
19 to allow a single pump to pull water from multiple
20 dewatering well points. Each of the dewatering well
21 points was connected with what appears to be an orange
22 or red hose into the header. There was a single line
23 that went into the pump.

24 Q. Are these the well points to the right of that
25 large pipe there?

1 A. Yes, they are.

2 Q. So, they were, the purpose was to drain water?

3 A. That's correct.

4 Q. And what are we seeing in the bottom center
5 photograph here?

6 A. That's a picture of the pump that was used to
7 dewater the groundwater in that area. There's a
8 discharge pipe running to the left of the pump to the
9 collection ditch at the toe of the slope.

10 Q. When the dewatering was completed, what did
11 you have done with these well points?

12 A. That the point they were converted to the
13 dewatering well points they continued to dewater without
14 having pump assistance. At that point that is where we
15 install the plastic PVC Ts and installed a lateral or
16 horizontal run of pipe subsurface from those Ts down to
17 this ditch. We put a ball valve on the discharge end of
18 the PVC so they could be left open in the event that the
19 water from the dewatering well points reached an
20 elevation such that they flowed into the horizontal run
21 of pipe they would automatically dewater into the
22 drainage ditch.

23 Q. How were the piezometers and well points used
24 to monitor water levels originally?

25 A. Originally the well points were designed for

1 dewatering, not necessarily an indication of the water
2 level. The piezometers were there solely to monitor the
3 water level.

4 Q. You said that Geosyntec installed the
5 piezometers and the well points under contract to TVA?

6 A. It was my understanding they were there to
7 supervise the installation.

8 Q. Let me show you what is an unmarked page
9 following page 37 on Plaintiff's Exhibit 812. Can you
10 tell us what that is?

11 A. This is a graph that shows the first quarterly
12 reading dated July 26th, '07. It shows the shallow
13 piezometer's which were the drive-point piezometers. It
14 indicates they were used for primary monitoring. It
15 shows that the former well points or the former
16 dewatering well points were in place and used for
17 secondary monitoring.

18 Q. There is distance and feet at the bottom of
19 this chart. What does that indicate?

20 A. There was a baseline that was established
21 along the that western dike and the hand sketch or
22 schematic that you provided previously that I stated
23 that Geosyntec prepared has that approximate baseline.
24 This is representing a distance to either side of that
25 baseline, 600 feet in one direction and about 2,000 feet

1 in the other.

2 Q. Where does that baseline appear,
3 approximately, on the west side wall?

4 A. If you have a schematic I can --

5 Q. Let's look at Plaintiff's Exhibit 59.

6 A. As I recall, that baseline was approximately
7 in that general area (indicating).

8 Q. And the line goes from along the -- does it go
9 along the road itself?

10 A. Yes, it does.

11 Q. Okay. I am going to tender Pages 7, 11 and 38
12 of Plaintiff's Exhibit 812, Your Honor.

13 MR. BYRNE: No objection, Your Honor.

14 THE COURT: So admitted.

15 Let's introduce those pages only as
16 Plaintiff's Exhibit 812. If plaintiff's want to
17 introduce additional pages --

18 MR. BYRNE: We are just going to get a
19 clarification, Your Honor, if 38 is this page here. It
20 says 2007 water level monitoring.

21 MR. MARQUAND: It is the page following
22 37. I introduced it as page 38 even though there is not
23 a page number on it.

24 MR. BYRNE: This is the one you are
25 introducing? No objection, Your Honor.

1 THE COURT: Thank you.

2 (Exhibit No. D-812 was received in
3 evidence.)

4 BY MR. MARQUAND:

5 Q. I want to ask you where did you get the data
6 to input into this groundwater monitoring system?

7 A. Data was provided by Matt Williams.

8 Q. Okay. It is the same Matt Williams who sent
9 you an e-mail on December 19th, 2008, which is marked as
10 Plaintiff's Exhibit 1711?

11 A. That is correct.

12 Q. When you forwarded this on -- on December 22
13 you forwarded two spreadsheets, is that correct?

14 A. It is a bit hard to read on the screen.

15 Q. Can you see it now?

16 A. Yes. When I forwarded this information to
17 Barry Snider on December 22nd, 2008, I provided the two
18 master sheets, if you will, that were sent to us from
19 Matt Williams.

20 Q. And one of the spreadsheet says it was called
21 a KIF dredge cell piezometer master. The other was a
22 KIF piezometers and well points master, correct?

23 A. That is correct. These contained the actual
24 data where Matt's technician had gone to the field and
25 read the water elevation in both the piezometers and the

1 well points.

2 Q. Okay. I want to show you what has been
3 admitted as Plaintiff's Exhibit 3610. This is only the
4 first page of that document. Can you tell me what it
5 is. You may have a copy up there. It is something like
6 that.

7 A. This is a scatter plot that shows the depth to
8 water for the various piezometers that are shown over on
9 the right-hand side of the graph.

10 Q. If you look at the second page, what do we
11 see?

12 A. This appears to be the raw data where each
13 month -- 11-16-07 and 12-7-07 that the water level in
14 these instruments were read.

15 Q. If we continue on, we see the subsequent
16 columns of the spreadsheet, don't we, Page 3?

17 A. Yes, we do.

18 Q. And on Page 4 and finally on Page 5 we see the
19 column for November 19th, 2008, correct?

20 A. That is correct.

21 Q. If we go over a couple of more pages, several
22 more pages to bates page ending 748, I think we see
23 another graph. Is that correct?

24 A. Yes. This appears to be a plot of only the
25 dewatering well points.

1 Q. Okay. The well points?

2 A. Yes.

3 Q. And immediately following that we see a chart
4 of well points?

5 A. That's correct.

6 Q. And it continues on with different data point
7 dates and data points, correct?

8 A. That is correct.

9 Q. All right. So that is one of the spreadsheets
10 that Mr. Williams sent to you, correct?

11 A. That is correct.

12 Q. Let me show you another one. This is
13 Plaintiff's Exhibit 919. What is shown on that
14 particular graph?

15 A. This graph actually shows the water level data
16 for various monitoring wells at the Kingston facility as
17 well as the rainfall that had been recorded over these
18 same time periods.

19 Q. Now, you used a different term here.
20 Monitoring wells as opposed to piezometers and well
21 points.

22 A. Correct.

23 Q. Would you explain at least in the terminology
24 used in these spreadsheets the difference.

25 A. The difference is that the piezometers that we

1 previously discussed were in place and were the focus of
2 the monthly monitoring. They actually contained the
3 data that Fossil Engineering Design Services were to
4 take and place into the spreadsheet that had been
5 previously provided by Geosyntec. The data that we see
6 here is the data for various monitoring wells that were
7 located around the facility on the north, western,
8 southern slopes as well as some that were actually
9 abandoned in place within the dredge cell complex.

10 Q. So you forwarded both of those spreadsheets,
11 which we just looked at, to Barry Snider on December
12 December 22, 2008?

13 A. That is correct.

14 Q. Let me show you Plaintiff's Exhibit 606. What
15 is that?

16 A. It's a bit fuzzy. This is a representation of
17 information that was contained in the Geosyntec
18 spreadsheet where the data from the previously referred
19 to spreadsheets, the data for the piezometers and the
20 dewatering well points would have been transcribed into
21 this sheet and then the plot that is located at the
22 bottom of the page would have been generated and used to
23 monitor for the trigger points or the thresholds that we
24 previously discussed in the roles and responsibilities
25 sheet.

1 Q. Did you forward this document to Mr. Snider on
2 December 22, 2008?

3 A. No, I did not.

4 Q. Did this particular Geosyntec, the one that
5 they created, did it include the monitoring well data?

6 A. Did the Geosyntec spreadsheet include the
7 monitoring well data?

8 Q. Yes.

9 A. No, it did not.

10 Q. Let me show you Plaintiff's, you were shown
11 this earlier, Plaintiff's Exhibit 1211. I believe
12 counsel referred to these as the TVA higher ups that you
13 forwarded this information to on December 22, 2008?

14 A. Yes.

15 Q. All right. It refers to an attachment. What
16 is that attachment?

17 A. This attachment appears to be the actual
18 Geosyntec spreadsheet.

19 Q. Let me show you this. This is the bates
20 stamped page next in order as Plaintiff's Exhibit 1212.
21 Can you tell us what that is?

22 A. This says that piezometers are to be read and
23 recorded monthly. It outlines who will read these, how
24 they will be read and that the data is to be sent to
25 Chris Buttram in Fossil Engineering and cc'd to Jamey

1 Dotson in Coal Combustion Byproducts. Chris plots the
2 information in a spreadsheet that generates a
3 color-coded plot. He's to notify CCBP, if there's a
4 problem.

5 Two sets of data are taken, both PZs and WPs
6 and then it says that there are 51 of the drive-point
7 piezometers and that they are the short ones that are
8 nested three to five feet and that they measure the
9 phreatic surface along the slope of the dredge cell.

10 Q. What was the intent of this document?

11 A. It looks like it is providing some history for
12 what fed into the Geosyntec spreadsheet.

13 Q. Is this the .doc that was attached to your
14 December 22, 2008, to the TVA higher ups?

15 A. I misspoke a moment ago. This is not quite in
16 focus. I didn't realize that was a .doc. The sheet I
17 was just reading appears to be the document that was
18 sent along with the piezometer data I had previously
19 sent out that day.

20 MR. MARQUAND: Your Honor, we tender
21 Plaintiff's Exhibit 1212.

22 MR. BYRNE: No objection.

23 THE COURT: So admitted.

24 (Exhibit No. P-1212 was received
25 in evidence.)

1 BY MR. MARQUAND:

2 Q. We earlier heard about the interchange between
3 you and Mr. Williams about repairing piezometers, well
4 points and putting up flags. I want to turn back to
5 that particular e-mail. It's Plaintiff's Exhibit 245.
6 I want to ask you a question that appears early on, was
7 raised early on to me. In Mr. Williams' August 22
8 e-mail, which is the first e-mail in the series, he has
9 got two numbered items. The second numbered item says,
10 "Do you want us to close the valves after we have taken
11 all the measurements?" Do you see that?

12 A. Yes, I do.

13 Q. What is the point of closing or opening
14 valves?

15 A. We typically left those valves on the
16 dewatering well points open so that if the water level
17 within the standpipes reached that elevation they could
18 dewater naturally through a controlled discharge pipe
19 and not simply overflow the top of the standpipe and
20 cause potential erosion issues. Every other valve would
21 be closed a few days to a week prior to Matt's
22 technician coming out to read the wells. That way the
23 levels could reach some sort of equilibrium within the
24 standpipe.

25 Q. What was the point of leaving the valves open

1 though?

2 A. If we left them open, that allowed the water
3 to freely drain through a controlled discharge point
4 into the rip-rap ditch along the toe of the slope.

5 Q. Where were the valves located?

6 A. They were located at the very discharge end of
7 the pipe at the ditch.

8 Q. Okay. Now, there has been discussion about
9 well points being damaged. If the well point, you said
10 there was a standup like a PCV pipe sticking up out of
11 the ground?

12 A. Correct.

13 Q. There was some discussion about those being
14 knocked down or hit by mowers?

15 A. Correct.

16 Q. Could those well points still serve their
17 purpose, if that stickup was knocked down?

18 A. Yes. They could. As long as when the mower
19 or bush hog cut off the vertical standpipe, as long as
20 it didn't somehow --

21 MR. BYRNE: I have to object again. This
22 man has absolutely no background or expertise to testify
23 to these matters. In fact, he's already testified they
24 weren't serviceable and for this very reason that they
25 didn't collect data from it, Your Honor.

1 THE COURT: As you know, there has been
2 some testimony -- I think what you are objecting to is
3 right for redirect. I will let him testify. I will
4 overrule the objection.

5 BY MR. MARQUAND:

6 Q. Let me be specific in my question. If the
7 stickup is knocked off, could the well points still
8 function to drain the water?

9 A. Yes, they could because the actual T
10 intersection was located subsurface. It was beneath the
11 ground. If the upper portion of the vertical standpipe
12 were cut or knocked over, as long as that section
13 remained in tact it could still act as a serviceable
14 dewatering well.

15 Q. In the e-mail on page 2 of Plaintiff's Exhibit
16 245, Mr. Williams -- you see where Mr. Williams on
17 September 5 sent an e-mail to you asking you to close
18 every other valve?

19 A. Yes, I do.

20 Q. What was the point of closing every other
21 valve?

22 A. There were so many of the dewatering well
23 points in place that we didn't necessarily need to get
24 the data from every one. Therefore, we closed every
25 other valve. That allowed every other dewatering well

1 point to reach a point of equilibrium so Matt's
2 technician could read the watering elevation, but
3 simultaneously allow the alternative every other well
4 point besides those to serve as dewatering well points.

5 Q. In fact, if you look at Plaintiff's Exhibit
6 919 I want to direct your attention -- it would be
7 Plaintiff's Exhibit 3610. I'm sorry. I want to direct
8 your attention to the readings for the well points on
9 October 23, 2008, and November 19th, 2008. There does
10 not appear to be readings for every well point. Is that
11 correct?

12 A. That's correct. It appears that there are
13 readings for every other dewatering well point. That
14 goes along with the fact that we only closed the valves
15 on every other well. That way the intermediate wells
16 could continue to function for dewatering.

17 Q. Thank you. Let me ask you about Plaintiff's
18 Exhibit 1555. Can you read that?

19 A. Yes, it's an e-mail that I sent to Chris
20 Buttram and Ron Hall on Saturday January 3rd, 2009.

21 Q. You were asked about this on cross
22 examination. The first e-mail I want to ask about is
23 Mr. Buttram's January 3 e-mail to you and Mr. Dotson
24 attaching an Excel spreadsheet.

25 A. Right. Chris' e-mail from January 3rd is

1 saying that he is taking the Geosyntec spreadsheet
2 containing both dewatering well points and piezometers
3 and modified it, said he left the original in tact that
4 contained all the data, but yet on that version he had
5 added either a separate sheet or had copied and pasted
6 the data over and removed that data so we could remove
7 the data extraneous to the piezometers.

8 Q. Is there any statement there that he deleted
9 data?

10 A. No. The bottom of the first paragraph in his
11 e-mail he states the original is still in its original
12 location.

13 Q. Are you familiar with Microsoft Excel?

14 A. Yes, I am.

15 Q. And how do you create a chart like 606?

16 A. With the version of Excel we were using, you
17 would simply go to the tab for inserting a chart and
18 then you would select the input data that feeds the
19 chart. You would select either the column or rows that
20 had the data you wanted. You would select information
21 for both an X and Y axis and assign properties to the
22 line weights and things of that nature.

23 Q. You have a new tab?

24 A. That's correct.

25 Q. Now, we have looked at plaintiff's 1555 which

1 is dated January 3, 2009.

2 A. Yes.

3 Q. And apparently Geosyntec sent the password to
4 Mr. Buttram on January 7th, 2009, looking at Plaintiff's
5 Exhibit 1584. Would you agree?

6 A. It's out of focus. Neil Davies and Whitney
7 Law have both provided information to Chris. Whitney is
8 actually asking Neil to send the password and it appears
9 that Neil or Whitney one have sent the password on to
10 Chris. It looks like the e-mail was generated from
11 Whitney. They provided the password so he could unlock
12 the calculation sheets that actually generate the plots.

13 Q. Did you see any indication that Mr. Buttram
14 had destroyed data and deleted data and needed to
15 restore it?

16 A. No, I do not.

17 Q. What did Mr. Buttram do with the password?

18 A. It appears that he sent it to two personnel at
19 the plant, the plant manager Ron Hall and the gentleman
20 named Rich Christensen who at the time I believe was the
21 outage or maintenance manager.

22 Q. I want to ask you about your interview with
23 the agent or agents from TVA's Inspector General's
24 Office. Do you have Plaintiff's Exhibit 4518 there?

25 A. 4518?

1 Q. Yes.

2 A. I have the exhibit.

3 Q. Is that the only time you have ever been
4 interviewed by someone from TVA's Inspector General's
5 Office?

6 A. No, it is not.

7 Q. Have you had a chance to review this
8 particular document?

9 A. Yes. I reviewed this document for the first
10 time within the last month, most likely the past few
11 weeks.

12 Q. And did you find it to be accurate?

13 A. No. Actually quite the contrary. I found
14 that they used terms that I would not have used to
15 describe various features or phenomenon. I found they
16 did a rather poor job of outlining the organization that
17 I worked for. In general over on I suppose it's the
18 third page, the one with the bate stamped ending in 563
19 the third, fourth, the third and fourth paragraphs, they
20 made what I call several just errors.

21 Q. Did they give you an opportunity to review
22 this document?

23 A. No, they did not.

24 Q. Did they ask you to sign it?

25 A. I don't recall signing anything.

1 Q. As far as you know, did they tape record or
2 have the interview recorded by a stenographer?

3 A. I recall there was not a stenographer. I
4 don't recall if they used a tape recorder. I don't
5 remember being informed they were recording the
6 conversation.

7 Q. Following the dike failure, were you involved
8 in providing documents to various people?

9 A. Yes. Because of the opportunity that I had
10 prior to the release, I have worked in both operations
11 and engineering, I had a significant amount of knowledge
12 of what had taken place at the facility over the past
13 several years. I was a point of contact for multiple
14 people. Organizations from external as well as internal
15 at TVA met with me multiple times over the course of the
16 days to weeks to months asking questions, asking for
17 information, picking my brain about whatever I recall or
18 did I know where certain files were stored in
19 Chattanooga, or just various things.

20 Q. Let me direct your attention. I believe you
21 got a copy in front of you, Plaintiff's Exhibit 196.
22 This was the inquiry from Mr. Walton on June 20th, 2009.

23 A. I don't have it here. I can read it on the
24 screen.

25 Q. You see that?

1 A. Yes, I do.

2 Q. Was Mr. Walton one of the individuals you
3 helped provide documents to?

4 A. Yes, I met with Bill several times and
5 provided documents and information.

6 Q. And before providing them to Mr. Walton were
7 you involved in gathering documents and helping to
8 provide them to both the Tennessee Department of
9 Conservation and also putting them on TVA's website?

10 A. Yes. As a matter of fact, the first two days
11 after the release instead of going to the plant and
12 providing support there, I actually stayed in
13 Chattanooga and provided support for the Engineering
14 Department and others as part of the document and
15 information roll-up.

16 Q. And so you were involved in providing
17 documents to TDEC?

18 A. I believe I was.

19 Q. Let me show you next to the last page of
20 Plaintiff's Exhibit 196. There is the e-mail from Glen
21 Pugh dated April 15th, 2009, to Mr. Kammeyer. Who is
22 Mr. Kammeyer?

23 A. John Kammeyer is currently the Vice President.
24 At that time John at that point was the Vice President
25 of the Technical Services Group which is the parent

1 organization that contained Fossil Engineering,
2 Engineering Design Services.

3 Q. He was the supervisor several layers above
4 you?

5 A. Yes.

6 Q. Mr. Pugh was apparently somebody associated
7 with the state of Tennessee and TDEC?

8 A. Yes, Mr. Pugh worked for TDEC as one of their
9 solid waste specialists.

10 Q. Do you know if the photographs you took on
11 October 20th, 2008 have been provided to TDEC?

12 A. They had been provided to TDEC, yes.

13 Q. And specifically this inquiry from him
14 mentions a photograph taken at 11:22 and at 14:45. Do
15 you see that?

16 A. Yes, I do.

17 Q. If you will bear with me, I will see if I can
18 locate the photograph you took at 11:22. Let me show
19 you what is marked as Page 29 of Defendant's Exhibit 34.
20 Can you tell us what we are looking at?

21 A. This photograph is taken from the top dike of
22 the dredge cell complex. I am standing in the
23 northwestern corner of what was Cell 2 facing to the
24 north northeast. What the photograph shows is --

25 Q. Are we looking at the inside of the dredge

1 cell?

2 A. Yes, we are looking at the inside of the
3 dredge cell.

4 Q. Okay.

5 A. The photograph actually shows some areas where
6 erosion has taken place and has eroded some of the
7 bottom ash or fly ash materials.

8 Q. What are these areas right here that look like
9 holes?

10 A. Those are the area of erosion I was just
11 referring to.

12 Q. Why doesn't the erosion go down into the
13 water?

14 A. From what I recall, this was primarily
15 constructed of bottom ash material which is more
16 granular than fly ash. It is relatively porous. That
17 would allow --

18 MR. BYRNE: Your Honor, I object to this
19 line of questioning. This gentleman has absolutely no
20 expertise in soil mechanics, certainly is not part of
21 all of the construction activity that is going on out
22 here, as depicted in this photograph. I believe he has
23 already testified several times that he at that point in
24 time, the relevant time period, he wouldn't know a
25 slough from a subsidence much less all this information

1 he is testifying to today.

2 MR. MARQUAND: As to the last statement
3 counsel made, I think that is a semantic game they are
4 playing. He has made it clear --

5 THE COURT: Let's focus on the objection,
6 his ability to testify to his personal knowledge as to
7 what is depicted in the photograph.

8 MR. MARQUAND: He was not only present,
9 but he took the photograph. He is an engineer. He has
10 inspected numerous ash disposal facilities. I think he
11 is entitled to give his opinion on what he saw both in
12 personal experience and professional experience.

13 MR. BYRNE: Just to bring it full circle,
14 we don't mind them talking about what he photographed.
15 What we object to is him discussing construction
16 details, construction history he doesn't know a thing
17 about, hasn't any more involvement in it than the man in
18 the moon. It is just constant trying to bolster a
19 witness and trying to make him out to be some expert
20 when prior to December 22, 2008, he didn't know a thing
21 about inspecting dikes or checking water levels or any
22 of this stuff he has testified to.

23 THE COURT: You are both arguing somewhat
24 at this point and making arguments on the weight of the
25 evidence. What is your response? What do you want to

1 ask him?

2 MR. MARQUAND: I want to ask him what
3 these are and why he thinks that.

4 THE COURT: Go on with those questions.
5 You can proceed with those questions.

6 BY MR. MARQUAND:

7 Q. What do you see in the two areas I have marked
8 with blue arrows?

9 A. Areas of erosion. The way the dike is
10 constructed, the road around the perimeter of the dike
11 is graded to drain inboard so any surface water that
12 comes into contact with the ash flows into the ash pond
13 through our permitted discharge. These are photographs
14 or areas where stormwater has flowed to a concentrated
15 point and eroded out an area along the inner rim of the
16 dredge cell internal dike.

17 Q. My question is, why do we not see this erosion
18 gully going down into the water?

19 A. I have a couple of different opinions. If you
20 see the areas --

21 THE COURT: I am going to, I think here we
22 are going from fact testimony to opinion testimony. I
23 will sustain the objection to that question concerning
24 the objection. Having heard the objection, I think it
25 would apply equally to that question. I sustain that

1 objection.

2 BY MR. MARQUAND:

3 Q. I am going to show you the top of Page 28 of
4 Defendant's Exhibit 34. What do we see here?

5 A. The picture is a bit dark.

6 Q. Okay.

7 A. It appears I am standing in the same general
8 area, and the time stamp backs that up. What I am
9 looking at is the rim ditch operation that takes place
10 within the dredge cell. This area of water that you see
11 around the inside parameter of the dike, that can be
12 called a moat.

13 The process that takes place is the material,
14 the solution and ash that is dredged from the lower ash
15 pond is pumped into a location in this ditch and the
16 water flows around this ditch and in this particular
17 cell it flowed in a clockwise direction to a discharge
18 point where the water flows back down to the ash ponds
19 from the discharge point. This allows the water to
20 carry the ash particles and it places them along the
21 path, as they naturally settle out.

22 Q. I simply wanted to contrast that with Page 29.
23 Page 29 sort of gives you the implication that there is
24 a big pond there, as opposed to the top of Page 28,
25 which as you said, was, likened it to a moat?

1 A. That's correct.

2 Q. You were asked about what appears as Page 64
3 of Defendant's Exhibit 34. I have got a picture I want
4 to show you, the same picture I want to show you. You
5 have heard discussion about underdrains. Is there any
6 indication there is a drain in that photograph?

7 A. You can barely see toward the center lower
8 portion of the picture a perforated pipe, not
9 perforated, but corrugated pipe much like what is used
10 in underdrain construction.

11 Q. What would be the significance of a drain in
12 this picture that we are seeing here?

13 A. Pipe that we are showing in this picture isn't
14 actually an underdrain. It's is a piece of pipe that
15 was put in place by the Heavy Equipment Division or the
16 operators of the facility. This is an area where we had
17 a low point along a bench. Anytime there was any
18 significant amount of rainfall, the water would
19 concentrate in this point and flow directly down slope.
20 That's what had caused this erosion. As a interim
21 measure the HED organization had placed this pipe in
22 that location to try to catch the water so it would
23 eliminate or reduce the potential for future erosion.

24 Q. Let me show you page 94 of Defendant's Exhibit
25 34. There is actually two photographs here. The top

1 photograph, can you tell anything at all about that?

2 A. The quality of the photo is pretty poor. What
3 was the number of the exhibit? Maybe I can look at the
4 hard copy.

5 Q. I have another one here. The second one is
6 the bottom of that page. I want to show you Page 94.
7 This particular photograph, what do we see here?

8 A. What we see here is an area that needs to be
9 revegetated. We can also see that there are some pieces
10 of black corrugated pipe.

11 Q. What is this right here?

12 A. That appears to be the outlet end of an
13 underdrain, the lateral pipe connected to an underdrain
14 where it is daylighting out of the slope.

15 Q. What do you mean daylighting?

16 A. That's a term that is used when a pipe that's
17 buried is exposed. That's the point at which it would
18 leave the dike itself. That appears to be an outlet for
19 an underdrain.

20 Q. I would like to ask you about a few more of
21 these photographs, if I could. We talked about the
22 piezometers along the west ditch. I want to show you
23 page 24 of Defendant's Exhibit 34. Did you take that
24 photograph?

25 A. Yes, I did.

1 Q. What are the bicycle flags for?

2 A. The bicycle flags are in place to delineate
3 the location of piezometers.

4 Q. Do you see water in the ditch?

5 A. Yes, I do.

6 Q. Is it supposed to be there?

7 A. Yes, the ditch was designed to transfer
8 surface water.

9 Q. I show you the top of Page 31 of Defendant's
10 Exhibit 34. Did you take that photograph?

11 A. Yes, I did.

12 Q. Where is that taken from?

13 A. I am standing roughly in the northwestern
14 corner of the dredge cell, but I have turned and am
15 facing south.

16 Q. Where is the northwestern corner in relation
17 to the area of the failure?

18 A. That is the area where, as I understand it,
19 the root cause analysis and Bill Walton have determined
20 that the failure propagated in this area, as well as the
21 plaintiff's expert Dr. Marks, I understand that he
22 agreed that that the failure started in this general
23 location.

24 Q. I am going to show you Plaintiff's 59. Can
25 you show us about where you were standing when you took

1 the photograph we just talked about?

2 A. In that general area is where I was standing
3 (indicating). Maybe a bit more -- let me clear that
4 actually. That is a better representation.

5 Q. That is about where you were standing?

6 A. In that general area. Not in Dredge Cell 2.

7 Q. And we see these white rows off in the
8 distance. What are those?

9 A. Those are the surface drainage repairs that I
10 had previously referred to as being the responsible
11 engineer for the construction. That's actually a layer
12 of gravel that's along the benches.

13 Q. Is this area where you were standing when you
14 took this photograph wet or dry?

15 A. There it was actually very dry. It is hard to
16 tell from this photo. It's a bit dark. If you can see
17 some of the other photos such as what is contained in
18 the hard copy of the exhibit, you can tell the
19 vegetation is dead. There's not any green lush
20 vegetation, as you would expect to see in an area that
21 was wet.

22 Q. I show you the bottom of page 31 of
23 Defendant's Exhibit 34. Where was that taken?

24 A. This was taken in the same general area, if
25 you look at the plan view I just marked, although

1 instead of being on the next to the top dike or bench, I
2 had walked down slope towards the 200 foot setback and
3 toward Dike C that we previously mentioned.

4 Q. Which direction are you looking here?

5 A. I am looking primarily north, a bit to the
6 northeast.

7 Q. Do you see any trees on the inside of any of
8 the dike, any of dikes at Kingston?

9 A. I see some woody vegetation along this 200
10 foot setback. Then I see what appears to be trees on
11 the opposite or the northern side of Dike C.

12 Q. The toe of Dike C?

13 A. At the toe of Dike C.

14 Q. Was it dry or wet where you were standing?

15 A. Where I was standing it was actually pretty
16 dry. Once again, you can tell from the vegetation
17 everything looks brown and dead, as opposed to the
18 vegetation that is in closer to the bench where it is
19 taller. That's actually located in the ditch that I
20 previously testified that was used to help transfer the
21 water back to the ash pond.

22 Q. I would like to show you, this is the top of
23 Page 32 of Defendant's Exhibit 34. Where were you
24 standing and what are you taking a picture of here?

25 A. If you look at the plan view that we just had

1 on the screen that I made a mark on, I am in that same
2 general vicinity in the northwest corner. I am looking
3 more to the west, northwest. Then the background of the
4 photograph --

5 Q. Back here?

6 A. Yes, the fenced in area, that is actually the
7 retention pond that was used to collect the surface
8 water runoff from the western dike. This also housed
9 the pump station that pumps the water into the drainage
10 swell or ditch that carried that water through an open
11 channel back to the ash pond.

12 Q. I show you the bottom of Page 32, Defendant's
13 34. Again, where were you standing and what are we
14 looking at here?

15 A. I was in the same general area. I had turned
16 clockwise 10 to 15 degrees maybe and I am standing on
17 what appears to be the Stage B dike, which would have
18 been the second lift of the internal dikes that composed
19 the dredge cell complex. What I have taken a picture of
20 here is the fact that the vegetation is dead or sparse.
21 Also to note that the facility's personnel had recently
22 mowed the vegetation at the site.

23 Q. Did you see any evidence of slides or
24 subsidence in that photograph?

25 A. No, I did not.

1 Q. Let me show you the top of Page 33, from
2 Defendant's Exhibit 34. Where were you standing and
3 what is this a photograph of?

4 A. Would it be possible to brighten this just a
5 bit. The general area, that is in the same general
6 area. What I have done now is walked up to the upper
7 most dike or stage. I think this was Delta 2.
8 Nonetheless -- actually this was not Delta 2. This was
9 probably Stage Charlie or C. This is one of the upper
10 dikes. There is a picture of the perimeter road and
11 again you can see that a lot of the vegetation in this
12 area is dead. The area appears to be dry.

13 Q. Is this looking across the area of the dike
14 failure?

15 A. Yes. This is looking across the area where
16 both parties have agreed that the failure occurred.

17 MR. BYRNE: Your Honor, I move to strike
18 that. I don't know Mr. Dotson's statement about what
19 the parties have or haven't agreed to -- I think we are
20 in the same neighborhood as far as where it occurred.

21 THE COURT: I understand that. I
22 understand the objection. I won't strike the testimony.
23 I understand your point. It is well taken. Let's go
24 ahead.

25 Mr. Marquand, I am under the assumption

1 that you are not quite finished with cross and under the
2 further assumption that Mr. Byrne is not going to stand
3 up afterwards and say he has no questions. Why don't we
4 break for the day at this point. It looks like we'll
5 have to invite this witness back tomorrow morning. How
6 does that sound to everybody?

7 All right. I just remind you, Mr. Dotson,
8 that, as I did on Friday, you are in the middle of your
9 testimony. You need to continue to not discuss your
10 case with other witnesses or potential witnesses until
11 the trial is concluded.

12 Unless there is anything else to take up,
13 we'll see everyone here tomorrow morning at nine a.m.,
14 September 27th, Tuesday. Thank you.

15 (Court was recessed.)

16 I CERTIFY THAT THE FOREGOING IS AN ACCURATE
17 TRANSCRIPT OF THE RECORD OF PROCEEDINGS IN THE
18 ABOVE-ENTITLED MATTER.
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